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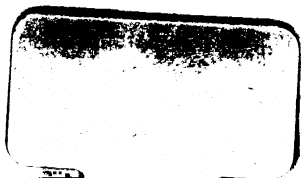


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THE PRACTICE
OF THE
INCUMBERED ESTATES COURT
IN IRELAND.

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THE PRACTICE
OF THE
INCUMBERED ESTATES COURT
IN IRELAND,

**FROM THE PRESENTATION OF THE PETITION FOR A SALE, TO
THE DISTRIBUTION OF THE FUNDS,**

WITH

NOTES OF ALL PRACTICE CASES,

**THE AUTHORIZED FORMS, PRECEDENTS OF CONVEYANCES, THE
ACTS, GENERAL RULES, SCHEDULE OF FEES, AND
STATISTICS OF THE COURT.**

BY

RICHARD CHARLES MACNEVIN,
SOLICITOR.

Second Edition.

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TO

The Right Honourable John Richards,

One of the Barons of her Majesty's Court of Exchequer in
Ireland,

Mountifort Longfield, Q.C., LL.D.,

and

Charles James Hargreave, Q.C., LL.D.,

The Commissioners for Sale of

Incumbered Estates in Ireland,

This Treatise is,

(by their Permission,)

Respectfully Dedicated.

PREFACE TO THE FIRST EDITION.

THE accuracy of every portion of this work has been verified by personal observation and experience. It is intended as a hand-book for the practitioners in the Incumbered Estates Court, and the Author trusts it will be found practically useful to both branches of the Legal Profession.

To the eminent Judge who, with such universal satisfaction, presides over the Incumbered Estates Commission, to his brother Commissioners, and the several officers of the Court, the Author feels sensibly grateful for the facilities afforded in the compilation of this Treatise.

Dublin, 11th November, 1850.

PREFACE TO THE SECOND EDITION.

THE First Edition of this Treatise having been for some time out of print, and the call for a Second Edition being very general, the Author has devoted as much time as he could spare to reproduce it, with a careful attention to such alterations in the practice as have occurred since November, 1850.

The great circumspection used in framing the General Orders, By-rules, and Regulations, previous to that date, has rendered these changes neither numerous nor important, for, with the exception of the appointment of the Master and the transferring to him certain duties from the Commissioners' Chambers, it will be found that there has really been no serious deviation from the course originally laid down, and now matured and successfully tested by ample experience.

The Act passed in the last Session for continuing the Court for two years, and, to some extent, enlarging the powers of the Commissioners, has been, in the following pages, carefully grafted on the original Statute; such

further By-rules as have been made, together with the valuable authorized Precedents of Conveyances, and the Further Directions as to the Abstracts, Rentals, Schedules of Incumbrances, and Leasehold Conversion, have also been collected, and arranged in their proper places.

The authentic reports of the cases which, from time to time, appeared in the *Incumbered Estates Gazette*, and in the ordinary reports, have been fully examined, and, especially those relating to the jurisdiction and practice of the Court, carefully collected and referred to.

The Author is much indebted to the learned Commissioners for their permission, most readily accorded, to dedicate this Treatise to them,—and his thanks are also due to the Master and the Examiners for revising the portions of it which relate to the practice in their offices.

8, *Middle Gardiner-street*,
December 13, 1858.

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THE PRACTICE

OF THE

INCUMBERED ESTATES COURT.

CHAPTER I.

APPOINTMENT, POWERS, AND GENERAL JURISDICTION OF THE COMMISSIONERS,

*Under the Acts 12 and 13 Vict., chap. 77 ; 15 and 16 Vict., chap. 67 ;
and 16 and 17 Vict., chap. 64.—Appeal from Commissioners' Orders.—Definition of Terms.*

THE first and second sections of the Act provide for the appointment of the Commissioners; that they should have a common seal, and that all documents purporting to be sealed therewith should be received in evidence without further proof. The third section directs, that all acts which the *Commissioners* are required or authorized to do may be performed by any *two* of them ; provision is then made for the appointment of the Secretary and other officers ; the payment of the salaries, and the period during which the Act was to continue in force. With reference to acts of a single Commissioner, it has been held, that a party is entitled to have the order of *two* Commissioners on every motion connected with the business of the Court ; but it is consistent with the practice, and not inconsistent with the Act, for any *one*

12 and 13
Vict., c. 77.

of the Commissioners to collect the biddings at a sale, and when he has ascertained the highest bidder, to intimate to him that he will become the purchaser. The conveyance, however, must be executed by *two* Commissioners, and it is always competent for any party to insist upon having the opinion of *two* Commissioners on the biddings, until the conveyance has been executed.—*In re The Earl of Kingston*, 3 I. Jur., 404.

The *duties* of the Commissioners to frame and promulgate forms and General Rules are pointed out by the ninth, tenth, and eleventh sections. The General Rules confirmed by the Privy Council, and enrolled in Chancery, *have the same force and effect* (under the tenth section) *as if they formed portion of the Act*.

And by the tenth section of the new Act, 16 and 17 Vict., c. 64, all the General Rules or Orders theretofore made by the Commissioners apply, and have reference to, the provisions of that Act, as well as to those of the former Act.

General powers of Commissioners.

The *powers* of the Commissioners are then defined ; and the section which appears to be first in importance (though not in numerical arrangement) as to their powers and jurisdiction, is the 15th, which provides :—

To be a Court of Record, and have the jurisdiction of a Court of Equity, and may refer any inquiries, &c., to any one Commissioner.

That the Commissioners shall be a Court of Record, and shall have all the powers, authority, and jurisdiction of a *Court of Equity* for the *investigation of title*, and for *ascertaining* and *allowing* incumbrance and charges, and the *amounts* due thereon, and settling the *priorities* of such charges and incumbrances respectively, and the *rights* of *owners* and *others*, and generally for ascertaining, declaring, and allowing the rights of *all persons* in any land or lease, in respect of which application may be made under the Act, or in the money t

arise from sales; and shall have the like authority and jurisdiction for *enforcing, rescinding, or varying* any contract for sale made under the Act, and in other matters incident to or consequent on a sale, as are vested in a Court of Equity in relation to a sale under the direction of such court; but their procedure shall be according to the General Rules to be made by the Commissioners under the Act, or, where the General Rules shall be inapplicable, at the *discretion* of the Commissioners; and the Commissioners shall have power, in relation to any matter or question before them, to send cases for the opinion of a Court of Law, and to direct *issues of fact* to be tried *by a jury*; and, subject to any such General Rules, the Commissioners may refer to any one of such Commissioners any such inquiries and matters as they may think fit, and such one Commissioner shall, for all purposes, have, in relation to all such inquiries and matters as shall be so referred to him, the like powers, authorities, and jurisdictions as the Commissioners or any two of them would have under the Act.

To direct
issues of fact
or law.

The 12th section provides :—

That it shall be lawful for the Commissioners, by summons under their seal, to require the attendance before them, at a time and place to be mentioned in such summons, of all such persons as they shall think fit to examine in relation to any question or matter depending before them, and to require all such persons to produce before them all deeds, books, papers, documents, and writings relating to such question or matter, and to examine *upon oath*, or, in case of persons allowed to make affirmation or declaration in lieu of an oath, upon affirmation or declaration (as the case may require), all persons who shall attend under such summons, and all persons who shall voluntarily attend before them as witnesses; and it shall be lawful for any of the Commissioners to administer such oath, affirmation, or declaration; and every person required by such summons to attend before the Commissioners, who, without reasonable cause, to be allowed by the Commissioners, shall fail to appear according to the tenor of such summons, or shall refuse to be sworn or to make affirmation or declaration (as the case may be), or shall not make answer to all such

Power to
summon
witnesses,
&c.

questions as shall be lawfully put to him by the Commissioners, or shall refuse or fail to produce before the Commissioners any such deed, book, paper, document, or writing, being in or under his custody, possession, or power, as shall be lawfully required to be produced by him before the Commissioners, shall for such default of appearance, refusal to be sworn or to make affirmation or declaration, or for not answering any such question as aforesaid, or not producing such deed, book, paper, document, or writing, incur and be liable to all such penalties, prosecutions, actions, and suits as a person might incur or be liable to for failing to appear, or refusing to be sworn or to give evidence, in any suit or matter depending in the Court of Chancery; and the Commissioners shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons summoned as aforesaid, for punishing persons failing to appear, or refusing to be sworn or to make affirmation or declaration or to give evidence, or guilty of contempt, and generally for enforcing all orders made by the Commissioners under any of the powers or authorities vested in them under the Act, and otherwise in relation to the matters to be inquired into and done by them, as are by law vested in the Court of Chancery for such purposes in relation to any suit or matter depending in such Court.

The foregoing section, it will be seen, gives full power to the Commissioners to receive *vivâ voce* evidence. The 13th section empowers them to proceed on *written* evidence; it provides:—

Power to proceed upon affidavits, and to appoint persons to take affidavits and examinations.

That the Commissioners may, where they think fit, receive in evidence *affidavits*; and such affidavits may be made before any person empowered to take affidavits which may be received in evidence in the Court of Chancery, or, where they think fit, the Commissioners may, by order under their seal, appoint and authorize any person to take affidavits, or to examine any witness, or witnesses, who shall attend before such person to be examined, in relation to any application to or matter pending before the Commissioners, and to

administer oaths, affirmations, or declarations for the purpose of such examination.

The preceding sections appear to regulate the *general powers* of the Commissioners in administering the Act. The 21st section gives them jurisdiction to order a *sale*; it provides:—

That if upon any application for a sale, or upon any information or evidence which may be required by and produced to the Commissioners in relation to the matter of such application, it shall appear to the Commissioners that a sale of the land or lease to which the application may relate, or any part thereof, *may be found to be expedient*, they shall direct notices to be given to such persons and in such manner as they shall think fit, and shall, where any parties interested in the land or lease apply to them for that purpose, hear such parties, by themselves, their counsel, or agents, and shall, *so far only as may be necessary* to enable them to determine whether, under all the circumstances, it is expedient that a sale of all or any part of the land or lease shall be made, *investigate the title* and the *incumbrances* affecting the land or lease, and the state and circumstances of the land, or of the land comprised in the lease, and, if it shall in their opinion be expedient that such a sale should be made, may, at their discretion, make *an order for the sale* of all or any part of such land or lease.

Upon application for sale, may, after notices and hearing, direct a sale.

The notice given under this section is the service of the Conditional Order for Sale.—*In re Assignee of Clendinning*, 3 I. Jur., 385.

The powers of the Commissioners to enforce obedience to their orders are regulated by the following General Rules, which provide:—

That in case of disobedience of any order made by the Commissioners, a writ of attachment, in the form to be hereafter settled by

them, shall issue against the party so in default or disobeying the order of the Court; and all sheriffs and other officers charged with the execution of like writs, issuing out of the Court of Chancery in Ireland, shall be bound duly to execute the same.—(*General Rule*, 69.)

That the Commissioners shall, in case they think fit, in order to enforce obedience to their orders, cause a writ of sequestration to issue against any party in default, such writ to be in the form to be hereafter approved of by the Commissioners; and such writ of sequestration shall be executed in like manner as writs of sequestration issuing out of the Court of Chancery in Ireland may now be executed.—(*General Rule*, 70.)

All orders made by the Commissioners may be enforced in *England*, if a copy under seal be enrolled in the Court of Chancery there (section 14).

The 50th section provides :—

Proceedings before Commissioners not to be restrained by injunction, &c.

Not to be liable in respect of acts done *bona fide*.

That the Commissioners shall not be subject to be restrained in the execution of their powers, nor shall any person be restrained from making application under the Act to the Commissioners, or doing any other act, or giving any consent under the provisions of the Act, by order or injunction of a Court of Equity, or by writ of prohibition, nor shall the Commissioners be required by writ of mandamus to do any act or take any proceeding under the Act, nor shall proceedings before them be removeable by certiorari; and the Commissioners shall not, nor shall any of them, nor shall any person acting under the order or authority of them, or any of them, be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted by them respectively in the exercise or supposed exercise of the powers of the Act.

The 51st section makes every order of the Commissioners *final*, unless where they themselves choose

vary it, or where they *permit* an appeal from it. The section enacts :—

That it shall be lawful for the Commissioners to review and rescind Orders may be reviewed by Commissioners.
 or vary any order which shall have been previously made by them, but, save as aforesaid and as after provided, every order of the Commissioners shall be final: provided, that where the Commissioners Appeal to Privy Council where allowed by Commissioners.
 allow appeal, *but not otherwise*, appeal against any order of the Commissioners may be made to the Privy Council of *Ireland*, *within one calendar month* from the making of the order appealed against, and such appeal shall be heard and reported on *by members of the Privy Council, to be appointed** by such Judicial Committee of the said Privy Council as after mentioned, and the orders of the said Privy Council in relation to such appeal shall be made according to the reports of such Judicial Committee, and the order of the said Privy Council on the appeal shall be final.

The Judicial Committee of the Privy Council is defined by the 52nd section, which enacts :—

'That the Judicial Committee shall consist of the Lord High Chancellor of *Ireland* for the time being, and such of the members of the said Privy Council as shall from time to time hold any of the following offices in *Ireland*; that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of *Ireland*, Lord Chief Justice or Judge of the Court of Queen's Bench, Master of the Rolls, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Barons of the Court of Exchequer, and Judge or Commissary of her Majesty's Court of Prerogative for causes ecclesiastical and Court of Faculties in and throughout *Ireland*, and of all persons members of the said Privy Council who shall have held the office of Lord Chancellor of *Ireland*, or any of the other offices hereinbefore mentioned, and of such other persons, not exceeding four in number, being Privy Councillors in *Ireland*, as the Lord Lieutenant or other Who to form the Judicial Committee.

* The words here in italic were inserted in error in the Act.

Chief Governor or Governors for the time being of *Ireland* shall appoint to be members of such Committee, and no such appeal shall be heard or reported on by the said Judicial Committee unless in the presence of at least four members of the said Committee; and no report on such appeal shall be made unless a majority of the members of such Committee present at the hearing concur in such report.

Practice as to granting liberty to appeal.

The Commissioners will grant liberty to appeal in all cases where there is a point of law in controversy; but in cases where the question is merely as to the practice of the Court, they will allow no appeal, considering that they are the most competent judges of the practice of their own Court.—*In re M'Loughlin*.

Appeal how brought.

Where an order giving liberty to appeal is made, a petition, stating clearly and concisely the facts of the case, together with the order appealed from, must be lodged, within one calendar month from the date of the order appealed from, with the Clerk of the Privy Council in the Privy Council chambers in the Castle. The petition should be addressed to the *Right Honourable the Judicial Committee of the Privy Council*, and a deposit of £10 is required to be made with the petition, to cover the office expenses, which generally amount to from £6 to £8, and the balance will be returned after the hearing.

Upon the discussion of some of the appeals already heard, the Lord Chancellor intimated that it would be convenient if the petition were printed. About half a dozen copies should be lodged for the use of the Council.

Copies of the petition should be also furnished to the

opposite side, and notice given in the first instance of the lodging of the appeal, and subsequently of the day fixed for the hearing, which will be ascertained from the Secretary to the Council.

Incidental to the proceedings to a sale, the Commissioners are empowered to *apportion rents* and to *partition lands*, the subject of a petition for a sale. The Commissioners have also jurisdiction to *partition, divide, or exchange land not subject to be sold*; but these subjects are treated of in distinct chapters.

Special powers to Commissioners.

By the Act of the 15 and 16 Vict., c. 67, the 5th section of the original Act was repealed, merely by extending the time for applying for a sale for another year from the 28th July, 1852.

15 & 16 Vict., c. 67.

A further extension of time, and for two years, from the 28th July, 1853, was granted by the Act of the 16 and 17 Vict., c. 64, s. 9, being an Act for continuing and amending the original Act.

16 & 17 Vict., c. 64.

By this Act some defects in the original Act were amended, and the jurisdiction of the Commissioners to some extent was enlarged in certain particulars, which will be noticed under the proper heads, as the special powers of the Commissioners are referred to.

On the subject of its general authority it has been held, that the Court does not assume any jurisdiction to adjudicate on the validity of deeds or wills, except when the question in respect to them arises incidentally, in the course of its ordinary proceedings. And the Commissioners, therefore, will not delay a sale by directing an issue to try the soundness of mind of a former owner,

at the time of the creation of the incumbrances affecting the estate, on the application of a party claiming under a will alleged to have been the last made previously to the lunacy, who had, however, allowed a subsequent will to be proved in the Prerogative Court, and had acquiesced in the proceedings in this Court for fifteen months after the making of the absolute order, as the questions would be more properly raised upon the settlement of the final schedule.—*In re M'Clintock*, 3 I. Jur., 199; *In re Beecher*, id., ibid.

Nor will the Court sell upon the application of an incumbrancer claiming to have a charge on the inheritance by reason of a settlement admittedly prior in point of date, whereby the owner was made strict tenant for life of the estate in question, being alleged, in the petition, to have been fraudulent and void as against the petitioner's incumbrance.—*In re Aylward*, 17th July, 1851; *In re Lidwell*, May 8th, 1852. And even where a decree of the Court of Chancery declared a settlement fraudulent and void as against creditors, but that decree had been pronounced in the absence of the remaindermen claiming under the settlement, this Court refused to make an order for sale.—*In re Carr*, 2 I. Jur., 6.

Definition of
terms used
in the Act.

The terms used in the Act are thus defined by section 54, which is extended to the recent Act, 16 and 17 Vic., c. 64, by its 10th section :—

Owner as
applied to
land.

The word "*owner*," as applied to any *land*, includes any person entitled *in possession* in fee simple or in tail, or *quasi* in tail, and any person entitled *in possession for a life or lives, or for a term of years determinable on the dropping of any life or lives, or for a term*

of years of which not less than ninety-nine years are unexpired, not being a lessee at a rent, and also any person entitled in possession as tenant by the courtesy, whether at Law or in Equity, and any person entitled in possession, whether in fee or for any lesser estate as aforesaid, to the Equity of redemption in any land, or to the land subject to any incumbrance, or a trust for the payment of any incumbrance, and any feoffees or trustees for charitable or other purposes, entitled in possession.

"Owner," as applied to a lease in perpetuity or other lease, includes any person entitled in possession to the land comprised in such lease for the whole estate created or agreed to be created by such lease, or for any derivative estate (created by settlement, or testamentary or other disposition thereof), quasi in tail, or for life or lives, or for years determinable on the dropping of a life or lives, or for years of which not less than fifty years are unexpired, not being an under-lease at a rent derived out of such lease, and any person entitled in possession, for such whole estate or such derivative estate, to the Equity of redemption in such lease or to such lease, subject to any incumbrance, or a trust for the payment of any incumbrance.

Owner as applied to lease.

The words "person" and "owner" extend to a body politic or corporate as well as to an individual.

"Person" and "owner" extend to body politic or corporate. "Incumbrance."

An "incumbrance" means any legal or equitable mortgage in fee, or for any less estate, and also any money secured by a trust, or by judgment, decree, or order of any Superior Court of Law or Equity, duly registered, and also any legacy, portion, lien, or other charge, whereby a gross sum of money is secured to be paid on an event or at a time certain, and also any annual or periodical charge which by the instrument creating the same, or by any other instrument, is made repurchaseable on payment of a gross sum of money, and also any arrear remaining unpaid of any annual or periodical charge, for payment of which arrear a sale of any land charged therewith might be decreed by a Court of Equity.

An "incumbrancer" means any person entitled to such incumbrance, or entitled to require the payment or discharge thereof; and "possession" includes the receipt of the rents and profits.

"Incumbrancer" and "possession."

- “Land.” “*Land*” extends to manors, advowsons, rectories, messuages, lands, tenements, rents, and hereditaments of any tenure, whether subject to any fee-farm or other perpetual rent, with or without condition of re-entry for securing the same, or otherwise, and whether corporeal or incorporeal, and any undivided share thereof.
- “Estate.” “*Estate*” extends to an estate in Equity as well as at Law, and to an Equity of redemption, and to the benefit of any covenant or contract for or right of renewal.
- “Lease.” “*Lease*” includes an agreement for a lease, and the estate or interest created or agreed to be created by such lease or agreement in the whole or any part of the land therein comprised.

By the 10th section of the recent statute, 16 and 17 Vict., c. 64, it is enacted, that in the construction of the former Incumbered Estates Court Act, the word “lease” shall include and shall be deemed to have included any term created by way of use, as well as any term created by way of demise at common law, so as such term be or have become a term in gross.

- “Lease in perpetuity.” “*Lease in perpetuity*” means any lease or grant for one or more life or lives, with or without a term of years, or for years determinable on one or more life or lives, or for years absolute, with a covenant or agreement in any of such cases, whether in the same or in any other instrument, for the perpetual renewal of such lease or grant, whether such lease shall be derived out of the inheritance or by way of under-lease out of any lease or other estate.
- “Church or College lease.” “*Church or College lease*” includes any lease by an Archbishop, Bishop, Dean, or Dean and Chapter, or other ecclesiastical corporation, sole or aggregate, or by the College of the Holy and Undivided Trinity near *Dublin*, or by the Ecclesiastical Commissioners for *Ireland*, where a fine has been paid on the grant of such lease.

CHAPTER II.

WHO MAY PETITION.—OWNER.—INCUMBRANCER.—WHAT AMOUNTS TO AN INCUMBRANCE.—PROVISIONS RESPECTING PERSONS UNDER DISABILITY.

AN *owner* may present a petition in his own name, under the 16th section, which provides :—

Owner may petition where land or lease is subject to an incumbrance.

That where *land*, or a *lease in perpetuity*, or *any lease for a term whereof not less than sixty years shall be unexpired at the time of such application*, or any *Church or College lease of land* shall be subject to any *incumbrance*, it shall be lawful for the owner of such land or lease, within three years from the passing of the Act, to apply for a sale of such land or lease.

An *incumbrancer* may present a petition under the 17th section, which provides :—

That where any *land*, or any such *lease* of land, shall be subject to any *incumbrance*, it shall be lawful for any *incumbrancer* on such *land* or *lease* within three years from the passing of the Act, to apply for a sale of the whole or part (as in the judgment of the Commissioners may appear necessary) of such *land* or *lease*, for the purpose of discharging the incumbrances thereon.

Any *person having a sufficient interest in any incumbrance* may petition under the 20th section, which provides :—

Persons having interest in incumbrance may petition.

That when any *incumbrance* shall be subject to any limitations of estate or interest, or shall be held upon any *trust*, the Commissioners

may proceed and act upon an *application* or *consent* made or given in respect of such incumbrance by the *first person* entitled to the income of such incumbrance, or by *any trustee* thereof, or *other person whose estate or interest* in the incumbrance appears to the Commissioners sufficient to enable him properly to apply or consent in respect of the interests of the parties interested in the incumbrance.

As to what shall be deemed an incumbrance within the meaning of this statute, the 19th section enacts with respect to *land* :—

Where *land* *not* deemed subject to incumbrances.

That for the purpose of authorizing an application for a sale the *land* shall *not* be deemed subject to an incumbrance where the same shall not affect the inheritance, unless such incumbrance shall affect a *term* of not less than fifty years absolute unexpired, or a greater estate in such *land*, and shall have been created by the *owner* of an estate of *inheritance*, or by a person who (but for an act which is void against or postponed at Law or in Equity to such incumbrance) would be the owner of an estate of inheritance, but an *incumbrance* charged under a *power* created by the owner of an estate of inheritance shall be deemed to have been created by such owner.

And in reference to *leases* the same section provides that :—

Where *leases* *not* deemed subject to incumbrances.

Such *lease in perpetuity* or other *lease* shall not be deemed subject to an incumbrance where the same shall affect a *derivative* estate or interest only, or less than the *whole estate* created or agreed to be created by such lease in perpetuity or other lease, unless such incumbrance shall have been created by the owner of or person entitled to the *whole* estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, or by a person who (but for an act which is void against or postponed at Law or in Equity to such incumbrance) would be such owner or so entitled, but any incumbrance charged under a power created by the owner of or person entitled to such whole estate shall be deemed to have been created by such owner or person so entitled.

The sixty years mentioned in the 16th section relate to an unexpired portion of a *lease*. The fifty years in the 19th section to an estate by way of *term* in the *land*.

An incumbrancer whose charge affects a life estate only, cannot have a sale for payment of debts affecting the inheritance, in order to clear the way for the payment of his demand out of the life estate, he not being an incumbrancer within the meaning of the 19th section. The words in the 54th section, defining an incumbrancer to mean “any person entitled to such incumbrance, or *entitled to require the payment or discharge thereof*,” refer to sureties, or to parties having only a limited interest in the incumbrance; and the words “*any incumbrance*” in the 16th and 17th sections must be construed with reference to the 19th section. The circumstance of there having been a decree for sale in the Court of Chancery does not confer jurisdiction in such cases.—*In re Lord Glengall*, 4 I. Jur., 65.

Where party
not entitled
to a sale.

So, the Court has no authority to sell a reversion or remainder, unless for payment of an incumbrance affecting the present and all intervening interests, so as to be able to give a possessory title to the purchaser; and, therefore, where the petitioner claimed upon foot of a judgment recovered against a tenant for life, and of another judgment for the same debt against the remainder-man, it was held that he had not an incumbrance affecting the corpus of the estate within the 19th section, although it *might* be otherwise if the judgments had been recovered on the *joint bond and warrant* of

the tenant for life and remainder-man.—*In re M' Mahon*, February 18th, 1852.

In like manner, where the petitioner had recovered a judgment against A., who was tenant for life of the estates in question, with remainder to trustees to preserve contingent remainders, remainder to his first and other sons in tail male, remainder to his brother B. for life, with divers remainders over, remainder to the first and other sons of the father of the tenant for life, and to the heirs male of their bodies; and B. was dead without issue; it was held that the judgment against A. did not attach upon an estate tail within the definition in the 54th section, and that the rule in *Shelly's Case* did not apply.—*In re Whaley*, 2 I. Jur., 7.

A solicitor for parties, who obtained a decree for sale in the Court of Chancery, has not such a lien on the estate for the payment of his costs as enables him to file a petition in this Court, although the decree for sale expressly directed the payment of such costs.—*In re Ruskell and Others*.

Where party
entitled to
sale.

On the other hand, where the owners of estates, A. and B., agreed amongst themselves that estate A. and certain portions of estate B., conveyed for the purpose to the owner of A., should bear the whole of a mortgage affecting both estates, and the owner of A. raised a sum of money from the petitioner for the purpose of paying off the mortgage, which he secured by an annuity charged on A., and the portions of B. conveyed to him, and the mortgage was accordingly paid off, but no assignment of it taken; it was, nevertheless, held that the petitioner

was entitled to a sale of the entire of both estates A. and B. ; the reserved portions of estate B., however, not to be applied until the residue of both estates was exhausted, and, in the event of there being a surplus, the owner of such reserved portion to have his costs.—

In re James Condon.

So, a judgment creditor of a tenant for life of leasehold estates, who makes salvage advances to preserve the interest in the property, is entitled to a sale.—*In re Primrose*, 3 Ir. Jur., 77.

C. being entitled to an incumbrance on land, covenanted with the petitioners that he would apply the proceeds of the incumbrance, when realized in a certain way, for the benefit of their *cestuis que trust*. It was held that the petitioners who were thus merely interested by reason of this covenant were entitled to a sale for payment of the incumbrance.—*In re Walter Blake*.

When, however, the incumbrance is thus peculiarly circumstanced, the special facts in reference to it should be clearly disclosed in the petition, to show the interest of third parties.—*S. C.*

Where a mortgage deed contains a covenant by the mortgagor for payment of the principal sum on a particular day, with interest in the meantime half-yearly, and a covenant by the mortgagee to reconvey upon payment on that day ; it was held, that the interest being in arrear, even by reason of the default of a receiver, the mortgagee was entitled to sell, though the period of redemption had not arrived.—*In re Lane*, 2 I. Jur., 93 ; *In re Lowe*, id., 131 ; *In re Prendergast*, id., 145.

Mortgage
where interest due.

Arrears of annuity.

Though the Court will not sell for payment of a current annuity, even if it be somewhat in arrear, where there is no term or trust created to secure it—*In re Tipping*, 2 I. Jur., 173; yet, where the annuity has ceased, and a considerable sum is alleged to be due, which it would be difficult to recover out of the accruing rents and profits, a sale will be directed, and the Court will not review the accounts of a Chancery Receiver for the purpose of ascertaining whether any sum is really due upon foot of the annuity.—*In re Mathews and Foster*, 1st Dec., 1852; *In re Hutchins*, 15th June, 1852.

Insolvent debtor petitioner.

An insolvent debtor cannot present a petition.—*In re Nesbitt*, 2 I. Jur., 147. And where an insolvent presented a petition, describing himself as the executor of another party, although his demand was vested in him in his own right, the Court directed that his assignee should be served with a copy of the petition and conditional order, and should have fourteen days to show cause or apply in respect of it, as he might be advised.—*In re M'Donnell*.

Subsequent events do not deprive the Court of jurisdiction.

Matters occurring, after the petition has been presented, to defeat or invalidate the title of the petitioner, do not deprive the Court of jurisdiction. Thus, though a judgment creditor of a bankrupt is not an incumbrancer within the meaning of the Act, yet where the bankruptcy occurred subsequently to the granting of the conditional order for sale, it was held, the sale should proceed.—*In re Lawder, Assignee of Clendinning*, 3 I. Jur., 385. And where the petitioner was an incum-

brancer on the estate of an owner, a settlement executed by whom had been set aside as fraudulent and void against creditors by a decree of the Court of Chancery, but subsequently to the sale in this Court that decree was reversed on a re-hearing, and the settlement established, whereby the estate of the owner was cut down to a life interest; it was nevertheless held by the Court of Exchequer, that there having been prior incumbrances affecting the inheritance, the title of the purchaser could not be disturbed, in an ejectment on the title brought by the remainder-man claiming under the settlement.—*Lessee Rutledge v. Hood*, Exchequer, November 25, 1852.

The incumbrances must not only be in their nature Sec. 22. such as the Act contemplates, but their amount is also a point to be considered, as there must be *primâ facie* evidence at the least that the estate is such as the Legislature contemplated, viz., *an Incumbered Estate*, and, accordingly, the 22nd section of the original Act provided :—

That the Commissioners shall not make an order for sale of any land or lease, or any part thereof, upon application by an incumbrancer on such land or lease, in case it be shown to the satisfaction of the Commissioners, by the owner of such land or lease, that no part of such land or lease is subject to any *receiver*, or in the possession of any incumbrancer, and that the amount of the *yearly interest* on the incumbrances and *other yearly payments* (if any), in respect of charges payable out of the income of such land or lease, and the other lands or leases (if any), subject to the incumbrance of such incumbrancer, do not exceed *one-half* of the net yearly income (after the payment of all tithe rent-charge, such part of the county cess and

No sale on application of incumbrancer where the interest and annual payments on charges do not exceed half the net income.

poor's rate as is payable by the owner, and all crown, quit, and head rent), of such land or lease, or of all the lands or leases so subject: provided always, that the decision of the said Commissioners thereupon shall in all cases be final and conclusive to all intents and purposes whatsoever.

By the second section of the recent Act, 16 and 17 Vict., c. 64, this section is repealed, but re-enacted, with the exception that it is thereby provided that the decision of the Commissioners thereupon "shall be final and conclusive only so far as relates to the jurisdiction of the Commissioners over the land or lease."

Where, in pursuance of an agreement with creditors, land was conveyed by deed to trustees, upon trust, to collect the rents and thereout to pay the interest and principal due to the scheduled creditors, it was held that the property was under a receiver within this section, and that the creditors were incumbrancers who could present a petition.—*In re Roche*, 3 I. Jur., 409.

A party entitled to a sale but for the provision in this section, if defeated on that ground, is yet not liable for the costs.—*In re Tisdall*, 1st May, 1852.

If the owner can bring himself within the provisions of this section, it would of course be an answer to the petition, and this point should be considered by the petitioner. In making the calculation regard should be had to the 10th General Rule, which provides for the mode of taking advantage of it. The owner will be allowed to place a fair occupation rent on the portions of the property in his own possession.—*In re O'Hea's Estate*, 2 I. Jur., 111.

Owner allowed fair occupation rent for property in his hands.

The 41st section provides :—

That application may be made for a sale, and an order for such sale may be made, notwithstanding any *pending proceedings* in a Court of Equity in *England* or *Ireland*, or any *decree* of any such Court of Equity already made for sale, and notwithstanding the owner may have power under an Act of Parliament or otherwise to make a sale; and where it shall be shown to the Commissioners that a *decree for a sale has been made* by a Court of Equity, the Commissioners shall, if they see fit, *without further inquiry*, order a sale of the land or lease decreed to be sold.

Order for a sale may be made, notwithstanding pending suit or decree for sale

But where an application for a sale has been dismissed with costs by a competent tribunal, no application by the same party for a sale shall be entertained, unless it is shown that such costs have been paid. (Section 18.)

No application to be entertained unless costs of any previous application paid.

Where the petitioner, a judgment creditor, had filed a bill for a sale in the Court of Chancery, upon which a decree had been made, directing that the plaintiff should redeem a prior mortgage, within twelve months, or that the bill should be dismissed with costs; and the plaintiff, within twelve months, filed a petition in this Court, which was allowed to proceed, and various steps permitted to be taken therein, for three months after the expiration of the twelve months limited by the decree. It was held, that an application under the 18th section, to stay the proceedings, until the costs of the Chancery suit were paid, was too late.—*In re Ashe*, 2 Ir. Jur., 187.

The words “without further inquiry,” in the 41st section, with reference to cases in which there are Chancery decrees, refer to inquiries which in other cases precede the making absolute the order for sale, and not to those which are instituted for the purpose of

ascertaining whether the petitioner was a party whose petition could be entertained, or whether the estate was such as the Court had jurisdiction over.—*In re The Earl of Glengall*, supra, 4 I. Jur., 65.

As regards persons labouring under disabilities, the 38th section provides :—

That where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under the Act, shall be a *minor, idiot, lunatic, or married woman*, the *guardian, committee of the estate, and husband* respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such persons respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of the Act.

A married woman for purposes of Act deemed a *femme sole*.

And a *married woman* entitled for her separate use (with or without power of anticipation) shall, for the purposes of the Act, be deemed a *femme sole*.

Power to Commissioners to appoint guardians.

And where there shall be no guardian or committee of the estate of any such person as aforesaid, being *infant, idiot, or lunatic*, or where any person the committee of whose estate, if he were idiot or lunatic, would be authorized to act for and represent such person under the Act, shall be of unsound mind or incapable of managing his affairs, but shall not have been found idiot or lunatic under an inquisition, it shall be lawful for the Commissioners to appoint a guardian of such person for the purpose of any proceedings under the Act, and from time to time to change such guardian; and where the Commissioners see fit, they may appoint a person to act as the next friend of a married woman for the purpose of any proceeding under the Act, and from time to time remove or change such next friend.

In reference to the power given to a married woman to proceed under preceding section of the Act as a *femme*

sole, it appears that she should have some person as her next friend to represent her; for, although she may be entitled to property for her separate use, if she petitions as a *femme sole* her solicitor will be held personally responsible for the costs she may incur.—*In re Estate of H. W. Knox*, 2 I. Jur., 147.

If married woman petition, it should be by next friend.

The application for the appointment of a guardian under the above provisions, is a chamber motion.—*In re Purcell*, 2 I. Jur., 14.

CHAPTER III.

IN RESPECT OF WHAT PROPERTY A PETITION MAY BE PRESENTED.

THE 16th section specifies the property in respect of which proceedings may be taken ; namely, *land, a lease in perpetuity*; any *lease* whereof not less than sixty years shall be unexpired at the time of the application ; or a College *lease* of land.

The definition of the terms *land* and *lease* should be borne in mind when proceedings are contemplated under the Act.

Church lease, containing *toties quoties* covenant for renewal, not within meaning of Act.

A *sub-lease* containing a *toties quoties* covenant for renewal of property held under a Bishop's lease, even though the sub-lessee might obtain the *fee* under the provisions of the Church Temporalities Acts (3 & 4 W. 4, c. 37, and 6 & 7 W. 4, c. 99), is not a Church lease within the meaning of the Act.—*In re Slack's Estate*, 2 Ir. Jur., 157.

Where there is a doubt as to jurisdiction, the Commissioners will not order a sale.

In that case the Court stated, that if there be a reasonable *doubt* as to the jurisdiction of the Commissioners to sell the *land* or *lease* included in the petition, they will not make an order for a sale, though their opinion should be in favour of the right to sell ; as, if the lease should be decided not to be within one of the classes

mentioned in the Act, the decision of the Commissioners might not be conclusive, and the purchaser might be evicted by the judgment of a Court of Law.

By the 6th section of the recent Act, 16 and 17 Vict., c. 64, power is conferred on the Commissioners to sell the entire of lands held in undivided shares, although some of such shares be not subject to any incumbrance. That section enacts that—

Where there is or shall be an application to the Commissioners for the sale of any undivided share of any land or lease, it shall be lawful for the Commissioners, where they shall see fit so to do, upon the application of the owner of any other undivided share or shares of the same land or lease (and although such other undivided share be not subject to any incumbrance), or on the application of any incumbrancer on such other undivided share or shares, to include the same share or shares, upon such terms as they shall see fit, with the share so proposed to be sold as aforesaid, and in every such case the Commissioners shall apportion the purchase money among the owners according to their respective shares so sold, and shall apportion the expenses as they may see fit.

Power to consolidate sale of different undivided shares.

The Court has not jurisdiction to sell lands held for three lives or ninety-nine years, whichever shall last the longest.—*In re The Trustees of O'Reilly*, 3 I. Jur., 16; 1 Ir. C. L. R. 43, C. B.; *In re Fuller*, 4 I. Jur., 183. Nor lands held for ninety-nine years, if three lives should so long live, with covenant to renew on the dropping of a life for ninety-nine years, if the two old lives and the life so added should so long live; and so from time to time, for the term of nine hundred and ninety-nine years.—*In re Lysaght*.

Lands included in different applications and different interests, the Commissioners may include them in the same sale.

The object of the Legislature being to create a new class of unincumbered proprietors, and to clear estates from the various obstacles which presented themselves in the way of permanent improvement of the soil, it wisely determined, as far as possible, to make each proprietor the owner of his own estate, and, with that view, has made provisions auxiliary to the working of the Act, which are comprised in the following section.

Where lands are included in *different* applications, and there are different *interests* in the same lands, the Commissioners may include them in the same sale, under the 36th section, which provides :—

“ That where there shall be separate applications to the Commissioners for sales of any land, and of any lease in the same land, or of two or more leases in the same land, or there shall be such applications for sales of different undivided shares of any land or lease, it shall be lawful for the Commissioners, where they shall see fit so to do, to include, with the consent of the persons by whom such respective applications may be made or prosecuted, and of any other persons whose consent the Commissioners may, under the circumstances, think fit to require, in the same sale, upon such terms as they think fit, such land and lease, or such leases, or such several undivided shares ; and where there shall be separate applications for sales under this Act, of any land, and of any lease in other land, or of different lands or leases in different lands, it shall be lawful for the Commissioners, where, from the lands being intermixed, or from other circumstances, it shall appear to them convenient so to do, to include, with such consent as aforesaid, such land and lease, or lands or leases, in the same sale, upon such terms as they may think fit ; and where any land or lease, or part thereof, subject to any incumbrance, is proposed or ordered to be sold, it shall be lawful for the Commissioners, upon the application of the owner of any lease or under-lease,

or estate in reversion, or other estate or interest whatsoever in the same land (and although such lease, under-lease, estate in reversion, or other estate or interest be not subject to any incumbrance, or would not, if subject to any incumbrance, be subject to be sold under an order of the Commissioners under the provisions herein-before contained), or upon the application of any incumbrancer on any such lease, under-lease, estate, or interest, to include the same, upon such terms as they may see fit, in the sale of the land or lease, or part thereof, so proposed or ordered to be sold as aforesaid; and all the provisions of the Act applicable to any land or lease subject to any incumbrance, and ordered to be sold, and to any incumbrance or charge upon such land or lease, and to the purchase-money arising from the sale thereof, shall, so far as circumstances admit, extend and be applicable to every such lease, under-lease, estate in reversion, or other estate or interest to be so included in the sale; and in every such case as aforesaid, the Commissioners shall apportion the purchase money and expenses as they see fit."

Upon the foregoing section but one case appears to have been decided, where an undivided moiety of land was held by the owner in *fee*, and he was *lessee for life* of the other moiety; the Court refused an application, on behalf of the owner, to sell (under the preceding section) his life interest in the second moiety.—*In re Francis Synge*, 2 I. Jur., 175. But now, by the 1st section of the recent Act, 16 and 17 Viet., chap. 64, it is provided that—

Where application has been made under the said Act, or shall hereafter be made under the said Act and this Act, or either of them, for a sale of any land or of any lease within sections 16 and 17 of the said Act, and all or any of the incumbrances affecting such land or lease also affects any lease of land in *Ireland*, not within the said sections 16 and 17 of the said Act, application may be made for sale

Lease not so subject, the Commissioners' jurisdiction to extend to such lease.

of such last-mentioned lease; and the jurisdiction and powers of the Commissioners, and all the provisions of the said Act, shall extend and be applicable to such last-mentioned lease, in like manner as in the case of a lease within the said sections 16 and 17 of the said Act.

The 4th section enacts that—

Where a grant amounts to an assignment of a lease, the rent reserved to be within sections 16 and 17 of recited Act.

Where any instrument purporting to be a demise or lease, or any other grant or assurance reserving rent, executed or made by any person entitled under any lease of land, is, in construction of law, an assignment of such lease, sections 16 and 17 of the said recited Act, and all other the provisions of the said Act and this Act, which would, in case such instrument, grant, or assurance has passed less than the whole term or estate created by such lease, have been applicable to or in respect of the reversion created under such instrument, grant, or assurance, shall extend and apply, and shall be deemed to have extended and applied, to and in respect of the rent thereby reserved, and all rights and interests thereunder vested in grantor or assignor, in like manner as such provisions would have been applicable to or in respect of such reversion.

Great increased facilities in the sale of leasehold interests, and considerable saving of expense, will arise from the operation of the 3rd section of the recent Act, which directs that—

Where a lease in perpetuity is ordered to be sold, the Commissioners may convert it into a fee-farm grant.

Where the Commissioners have ordered or shall order the sale of any lease in perpetuity, they may, if they shall think it expedient so to do, cause notice to be given to the owner or other persons interested in the reversion, or any person on behalf of such owner or other persons, and may thereupon proceed to convert such lease in perpetuity into a fee-farm grant, according to the principles prescribed in the Renewable Leasehold Conversion Act, but their procedure in relation thereto shall be according to the General Rules and practice of the Court of the said Commissioners; and in case such conversion shall be ordered, they shall have power to convey the

land included in such lease to the purchaser in fee, subject to the fee-farm rent ascertained as aforesaid, and to such exceptions, reversions, covenants, and clauses as shall be in conformity with the original lease, and the provisions of the Renewable Leasehold Conversion Act; and thereupon the owner for the time being shall have the same rights and remedies against the purchaser, his heirs, executors, administrators, and assigns; and against the land, by action, distress, entry, or otherwise, in respect of such rent, and of any exceptions, reservations, covenants, and clauses contained in the said deed, as belong by law to the owner of any fee-farm rent created under the said Acts.

The question of the right to sell arrears of rent due by the tenants at the time of the sale, which has been the occasion of much animated discussion in various branches of the Court of Chancery—see *Carroll v. D'Arcy*, 3 I. Jur., 322; *Hoops v. Kingston*, 5 I. Jur., 333—is set at rest, in this Court, by the 9th section which provides that—

Where a sale is made by the Commissioners under the said Act, or this Act, of any land or lease, it shall be lawful for them, whenever it shall appear to them convenient so to do, to include in such sale all or any part of the arrears of rent, if any, which may at the time of the sale be owing from any lessees or tenants, subject to whose leases or tenancies the sale is to be made, where such arrears are subject to any incumbrance in respect of which an incumbrancer shall have obtained an order for sale, or where the order for sale has been obtained by the owner, and in the conveyance or assignment of such land or lease, to assign such arrears to the purchaser accordingly; and such purchaser, his heirs executors administrators or assigns, shall, after such assignment of the said arrears, have, for the recovery and in respect of the non-payment thereof, the same rights and remedies which the person or persons who would have been entitled to such arrears would have possessed

Commissioners may include arrears of rent in a sale.

if no such assignment thereof, nor any conveyance or assignment of such land or lease, had been made.

It has been held that a perpetual annuity or rent-charge, issuing out of land held *quasi* in fee, cannot be the subject of sale in this Court.—*In re Massy*, 2 Ir. C. L. R., 32, C. B.

CHAPTER IV.

THE PETITION AND ABSTRACT OF TITLE.

THE petition and abstract of title must be presented *together* ; and will be considered together in this chapter : it will be difficult to prepare the one without the other ; but attention may be directed, in the first instance, to the petition, and the Commissioners' forms and directions relating to it.

Instructions
for prepara-
tion of
petition.

The 1st General Rule applicable to the petition is the 5th, which directs, "That the proceedings under the Act shall be commenced by petition, according to the form to be settled by the Commissioners, and it is to be signed by the petitioner or his attorney, and shall be accompanied by an affidavit, verifying the material facts."

Proceedings
to be com-
menced by
petition. To
be signed by
petitioner
or his
attorney,
and verified.

The 6th Rule, providing for a case not likely frequently to arise, namely, where a party presents a petition himself, and not through a solicitor, we shall altogether disregard.

Under the 1st Rule the Commissioners have fixed the forms of petitions, and have issued directions in reference to them. The preliminary directions require, that the petition shall be entitled in the matter of the estate

Title of peti-
tion.

of the party whose property it is sought to sell;
thus :—

“ In the matter of the estate of A. B.,
“ Owner.”

Commence-
ment.

And that the commencement of the petition, if by an incumbrancer, shall be :—

“ The petition of C. D., an incumbrancer, on land.”
If the petition be by the owner, the title should be :—

“ In the matter of the estate of A. B.,
“ Owner and petitioner.”

In all cases, the further proceedings in the matter should be entitled similarly to the title of the conditional order pronounced in the matter.

Amended
title in cases
of death,
&c.

In case of death, or other change in the names of either owner or petitioner, the name of the new party should appear in the title thus :—

“ In the matter of the estate of A. B., petitioner,
(now deceased), and C.D., his heir-at-law ;”
(or other title, such as devisee, assignee, &c.)

If the petition be presented to sell the estate of a party who had taken the benefit of the Insolvent Debtors' Act, it should be entitled thus :—

“ In the matter of the estate of C. H. Lawder,
Provisional Assignee of the estate of A. B., Owner.”

If a creditor's assignee had been appointed in the Insolvent Debtors' Court, his name should be substituted for that of the official assignee.

In cases of
difficulty as
to owner-
ship.

Difficulty may frequently arise in determining who is the “ owner,” yet there is an absolute necessity in all cases that the owner be accurately determined. On

this point, the observations of Baron Richards, in the case in which *J. M. Kennedy*, was petitioner, and *Sir John Burke*, Bart., was erroneously stated to be the owner, are most important. He observes that "In this case a person is stated to be 'OWNER,' who has no more title than any other person in the community. It is very important that the owner should be stated correctly, as confusion of a very inextricable kind might arise, if carelessness in the title of the owner were to be allowed; and if we were to change the title of the petition from week to week, absent parties might be misled, and great difficulties be occasioned. If there be any doubt as to the owner, the petition should be specially entitled, 'In the matter of A. B., C. D., or E. F., some or one of whom is owner,' and then there could be no substantial difficulty." The petition in that case was dismissed.—2 I. Jur., 122.

Remarks of
Baron Rich-
ards on the
subject.

Where the owner had sought the benefit of the Insolvent Debtors' Act in England (although he was not discharged under that Act), the petition not having been entitled in the name of the official assignee as owner, nor the facts connected with the insolvency disclosed in the petition, it was dismissed with costs personally against the solicitor.—*In re Nisbett's Estate*, 2 I. Jur., 353.

Where
owner had
been insol-
vent.

The petition should be carefully prepared, as the Commissioners will not usually allow it to be amended, but will dismiss it, and leave the party to present a new one; and especial care should be taken that the petition and schedules are justified by the abstract of title.

Petition
should be
justified by
abstract.

Should the Court permit any amendments to be made, the costs thereof will not be allowed without *special order*.

It should appear by petition whether an infant, idiot, lunatic, or married woman were interested in property.

It should appear by every petition whether the petitioner knows, or has reason to suppose that any person interested in the premises to which the petition relates is an *infant, idiot, lunatic, or married woman*; and if so, he should state, so far as he is able, the names and addresses of the guardian, or committee of the estate and person, or husband of any such person.

The following are the forms of petitions, and general directions accompanying them, issued by the Commissioners, with the General Rules.

No. 1.
Form of petition for sale by owner.

In the Matter of the
Estate of William
Howard, of Bal-
linderry, in the
County of Cork.

To the Commissioners for Sale of Incumbered
Estates in Ireland.

The petition of William Howard, an owner of land,
Sheweth,

That he is owner, as tenant in fee, of the premises described in the first part of the first schedule hereunto annexed, under the title set forth in the abstract accompanying this petition, and that he is in possession and receipt of the rents and profits of the whole thereof, under his said title, since the 1st of January, 1835.

That he is owner, as tenant for his life, of the premises described in the second part of the first schedule hereunto annexed, under the title set forth in the abstract accompanying this petition; and that on the 15th of June, 1830, he entered into possession and receipt of the rents and profits thereof, and he is still in receipt of every portion thereof, except the lands of Ballintoye and Garranebeg.

That William Johnson, of the city of Dublin, entered into receipt of the rents and profits of Ballintoye, under an elegit, on the 20th of April, 1844, and has continued in the receipt thereof to this date; and that George Symons entered into receipt of the rents and profits of Garranebeg, on the 5th of March, 1845, under the mortgage in the abstract stated, bearing date the 11th of May, 1849, and is still in receipt thereof.

That the said premises are subject to several incumbrances set forth in the second schedule hereunto annexed, and that there is not any suit or matter depending in any Court of Equity in relation to the premises, or any part thereof, or in relation to the receipt of the rents and profits thereof.

Your petitioner therefore prays that the premises, or such part thereof as the Commissioners shall direct, may be sold, and that the petitioner may have such further relief in the premises as to the Commissioners shall seem meet.

The petition shall contain a schedule of the property of which a sale is sought, stating :—

General directions as to schedules to petition schedule of property.

- 1st.—The denomination of the land, or in the case of incorporeal hereditaments, a full and complete description thereof.
- 2nd.—The head-rent, or *quit-rent*, if any, to which the property or any part thereof is liable, and the gale-days; and, if held by lease, the particulars thereof and the gale days; and, if held by lease in perpetuity, the circumstances of the property with regard to renewals.
- 3rd.—The arrears, if any, of head-rent or *quit-rent*, due up to and including the last gale-day.
- 4th.—The tenants' names.
- 5th.—The date and description of the instrument, if any, under which each tenant holds, and the tenure of each tenant, and whether any timber or trees on the land belong to the tenant, or are claimed by him.
- 6th.—The extent and description of each holding or farm.
- 7th.—The annual rent.

8th.—The gale-days.

9th.—The arrears due up to last gale-day, inclusive.

10th.—Observations; relating, for example, to the character and capabilities of the estate proposed to be sold, to the liability of the estate to any arrear of tithe rent-charge, or to any charge for money borrowed under the Acts for promoting the Drainage of Lands and the Improvement of Navigation and Water Power, in connexion with such Drainage; or the Act to facilitate the Improvement of Landed Property in Ireland, or imposed thereon under the provisions of the Labour Rate Acts, and the Acts for the Relief of the Poor; or to any other special matter affecting the circumstances of the premises proposed to be sold, and the charges affecting the same.

Schedule of
incum-
brances.

It shall also contain a schedule of all charges and incumbrances, whatever, affecting the premises, and each and every part thereof, specifying:—

1st.—The *date* of each incumbrance.

2nd.—The *name* of the party entitled to the same.

3rd.—The *manner* in which such charge was created, whether by will, settlement, or mortgage, judgment or otherwise.

4th.—The sum due for *principal* on each incumbrance.

5th.—The annual rate of interest payable in respect of each charge or incumbrance; the day or days of payment of the same, if there be any specially appointed for that purpose; and the amount due for interest up to some certain day to be named in the petition; or, in the case of an annuity, the arrears up to and including the gale-day next before the presenting of the petition.

6th.—Any special circumstances; such, for example, as any proviso respecting the rate of interest or the terms on which an incumbrance may be paid off, or an annuity redeemed, or any exemption of a portion of the premises from the whole or any portion of the incumbrance or the liability of any other property, or of any person, to pay any incumbrance,

whether in exoneration of the premises or otherwise ; distinguishing whether the estate proposed to be sold is primarily liable to the incumbrance, or only by way of guarantee ship or suretyship.

The petition shall be accompanied by a concise abstract of the title to the premises, and by an affidavit by the petitioner or his attorney, that he has read the petition, including the schedules, and also the abstract of title accompanying the same, and that he believes the said petition and schedules to be true, and that he believes the abstract to be a correct and fair abstract of petitioner's title.

Abstract of title by owner.

The deponent must sign the petition, and each schedule, and the abstract of title.

In the Matter of the
Estate of William
Howard, of Ballin-
derry, in the Co. of
Cork.

To the Commissioners for Sale of Incumbered
Estates in Ireland.

No. 2.
Form of pe-
tition by in-
cumbrancer.

The petition of James Johnson, an incumbrancer on land,
Sheweth,

That on the 17th December, 1810, James Howard, of Ballinderry, in the county of Cork, merchant, since deceased, conveyed the lands mentioned in the first schedule hereto, in fee, to one Henry Dillon and his heirs, by way of mortgage, to secure the sum of £10,000 with interest, at the rate of 5 per cent. per annum, payable 25th March and 29th September.

That the said James Howard had such an estate or power over the premises as enabled him to execute the said mortgage.

That your petitioner is now the owner of the said mortgage, as appears by the abstract of title herewith lodged.

That William Howard, of Ballinderry, is now the owner of said lands, as tenant for life thereof.

That on the 5th of May, 1838, one John M'Namara filed his bill in the Court of Chancery in Ireland (among other purposes) to reco-

ver a certain charge of £5,000 affecting the premises, and to which the said John M'Namara claimed to be entitled.

That a receiver in said cause is now in the receipt of the rents and profits of the premises, except the lands of Ballinderry, which are in the possession of the said William Howard.

That a decree to account in the said cause was pronounced on the 16th June, 1843, a copy of which is annexed hereto.

That the Master in the said cause made his report, bearing date the 3rd of August, 1847, a copy of which is annexed thereto.

That the said report was confirmed, and a decree pronounced in the said cause, on the 18th of November, 1847, a copy of which is annexed hereto, and that no person intends to object to the said decree and report.

That the sum of £12,500 is now due on foot of the said mortgage, together with interest, since the 29th of September, 1849, the gale day up to which interest is computed.

That your petitioner is not the first incumbrancer on the said premises, and that he has in a schedule, hereto annexed, set forth the other incumbrancers affecting the premises, and in whom the same are vested, according to the best of his knowledge, information, and belief.

Your petitioner prays that the premises, or a competent part thereof, for the discharge of the incumbrances affecting the same, may be sold; and that your petitioner may have such further relief in relation to the matters aforesaid, as to the Commissioners shall seem meet.

General
directions.

To this petition must be annexed a schedule of the lands proposed to be sold, which shall be in the same form as the schedule to a petition by an owner, so far as the information of the petitioner shall enable him to give the same; and also a schedule of the incumbrances affecting the premises, so far as petitioner is acquainted with the same, and copies of the decrees and reports made in the pending suit in Chancery. The petition must be accompanied by an abstract of petitioner's title, and by an affidavit by petitioner or his solicitor, that he has read the said petition, and schedules, and abstract; and

Copies of
Chancery de-
crees and re-
ports to ac-
company
petition.

that the petition including the schedules is true to the best of deponent's knowledge, information, and belief; and that he believes the abstract to be a fair and true abstract.

The deponent must sign the petition and each schedule, and the abstracts of title.

Where an application for a sale of any land or lease has been dismissed with costs by a competent tribunal; upon application by the same party for a sale of such land or lease, or any part thereof, he shall by his petition state that such costs have been paid, and when, and to whom, and verify such statement by affidavit.

Where application had been dismissed.

That every petition for sale, whether by an owner or incumbrancer, shall state whether there is any suit or matter depending in any Court of Equity in relation to the premises or any part thereof, or in relation to the receipt of the rents and profits thereof; and if there be any such suit or matter, it shall state in what court such suit or matter is depending, and a short description of the title thereof, and to what state such suit or matter has reached, and what declarations, inquiries, or proofs have been made under any decree or order in such suit or matter, and whether the petitioner, or any other person to his knowledge, objects to the decree or to any finding or proof under it, as erroneous or proper to be reconsidered.

Petition should state all particulars as to existing Chancery causes or matters.

In setting forth the schedules of tenancies, leases, agreements for leases, and incumbrances, the owner shall include all such as he knows and believes to be claimed by any person, although he may dispute the validity of such claim; and in the column of observations he may state how far he disputes such claim.

Further directions as to schedules to petition.

Tenants' leases.

The attorney presenting a petition for an incumbrancer, ought to be prepared with the documents showing the existence of the incumbrance and of petitioner's title thereto, as the Commissioners may require to inspect them before fiatting the petition under rule.

Documents showing title to incumbrance required.

It will be seen by the foregoing forms and directions that the petition of the *owner* can be comprised in a few sentences, stating, viz. :—

Remarks upon the form of petitions.

By owner.

1.—The *ownership* of the property (referring to the detailed statement of his title, accompanying the petition).

2.—That the property is subject to *incumbrances* (set forth in the schedule).

3.—That there *is no Receiver* over any portion of the property, the whole of which is in the petitioner's possession ; or if the facts be so, that there *is a Receiver* or mortgagee, or other party in receipt of the rents, and stating concisely the cause or matter in which such receiver was appointed, and the stage in which the cause or matter is.

4.—That there is no person interested in the property labouring under *disability*, viz. :—an infant, idiot, lunatic, or married woman ; or, if there be any such, their names and interests, and their guardians or committees, if any.

5.—That the petitioner is desirous to have the property sold to pay the incumbrances.

There is very little variation in the form which will be used by an *incumbrancer*. It should state :—

By incumbrancer.

1.—The nature and particulars of the *incumbrance* in respect of which a sale is sought (referring to the schedule for the property affected).

2.—That the party creating the incumbrance had such estate or power over the premises as enabled him *to charge the property*.

3.—That the petitioner is the *owner of the incumbrance*, referring to the statement of title accompanying the petition to evidence the statement.

4.—That the person stated to be the *owner of the property* affected is such *owner* in fee, or for life, or as assignee of another party, as the case may be.

5.—That there *is no Receiver* over any portion of the property which is in the owner's possession; *or*, that there *is a Receiver* or other party in receipt of the rents; and detailing concisely the cause or matter in which such receiver was appointed, and the state in which the cause or matter is.

6.—That there is no person interested in the property labouring under *disability*; or if there be, the name and interest, and the names of the guardian or committee.

7.—That there is *due on foot* of the petitioner's *incumbrance* (state principal and interest to last gale day, and costs).

8.—That the petitioner is (or is not) the first incumbrancer, and that there are (or are not) other incumbrancers (stated in the schedule).

9.—That the petitioner desires to have the property sold for payment of the incumbrances affecting it.

In preparing the draft petition, it may be convenient to divide it into the different heads here pointed out, and to see that it contains the statements required. In the preparation of the schedules difficulties occur, and the following suggestions may be of use:—

In preparing the schedule of *incumbrances*, the Registry search, obtained for the purpose of preparing the abstract of title, should be examined, and the incumbrances appearing in it stated; a careful search and abstracts

Schedule of incumbrances to petition.
Registry search.

Search for judgments; and judgment rolls.

should be made in the office for the registration of judgments registered or re-registered against the *owner* and his *immediate predecessors* for the last twenty years, and for recognizances, crown bonds, &c., from 1st November, 1844. It may be here remarked, that the 12th General Rule provides, "That the statements in any petition shall not constitute an admission of the validity of any claim stated therein, or of any particular sum being due in respect of any incumbrance, save claims and sums *expressly admitted* by the petitioner.

Schedule of property.

In preparing the schedule of *property*, the receiver's account, if the property be in the Court of Chancery, will assist. In general, the denominations can easily be discovered; and having learned the names of the several townlands, and the baronies in which they are situated, the exact contents and Ordnance and Poor Law valuations can be easily ascertained by reference to Mr. Griffith's valuation, which can be inspected at his office in Baggot-street, or at the County Treasurer's, or obtained from the Clerk of the Union in which the property is situate.

In cases where decree or bill filed.

If there be a suit pending in the Court of Chancery for a sale, there will be little difficulty in preparing the petition, as the bill will, most probably, contain a full statement of title to the property, and to the incumbrances on it; and, with a slight alteration, it can be easily converted into an abstract of title. A reference to the last receiver's account, in case there be a receiver over the property, will afford sufficient information as to the lands and tenants' names.

Having procured the necessary information, there will be little difficulty in preparing the draft of the petition from the form given by the Commissioners; it has been shown to be extremely simple, and the directions accompanying it must be clear and intelligible to any solicitor. But as there may be some question more properly the duty of counsel to consider, either as to the *ownership or incumbrance*, the solicitor should send a fair draft petition and abstract to counsel to settle, and he will be entitled, in his costs, to that expense. Generally a fee of £2 2s. would be sufficient, if the case *be simple*, but, if *any* question of difficulty is involved in it, the Taxing Officer will take that into account, and allow a larger fee in proportion.*

Settlement of petition and abstract by counsel.

Fee to counsel.

The directions require that every petition should state *whether* the petitioner knows, or has reason to suppose, that any person interested in the premises to which the petition relates is an *infant, idiot, lunatic, or married woman*, and if so, that he should state, so far as he is able, the names and addresses of the guardian or committee of the estate and person, or husband of such person.

Further remarks on forms and directions.

By some oversight both the forms given omit the *allegation* which would comply with that direction. The statement usually adopted is, "That petitioner does not know, and has no reason to suppose, that any per-

Statement as to persons under disability necessary in petition.

* Solicitors are entitled to have the petition settled by counsel. See note at end of schedule of fees, by which it is provided that a fee to counsel should be allowed for (amongst others) "*perusing and settling the draft petition.*" The Taxing Officer will, in *every* case, allow *against the fund* a fee of two guineas.

son interested in the said premises is an infant, idiot, lunatic, or married woman" (save as herein-before stated, or otherwise, as the case may be). If there be any such parties interested, of course it should be stated in compliance with the direction.

Statement
as to exist-
ence of
Equity pro-
ceedings ne-
cessary.

Another important direction is, that which directs it to be stated whether there is any suit or matter pending in the Court of Chancery, the title of the suit or matter, and to what state it has reached; whether merely a bill filed, or bill and answer, or decree for an account; and whether a receiver appointed in the suit or in a matter; and whether any declarations, inquiries, or proofs have been made under such decree, or under any order in such suit or matter; and whether the petitioner, or any other person to his knowledge, objects to the decree, or to any finding or proof thereunder, as erroneous, or proper to be reconsidered.

This should be attended to; and it should be borne in mind, that if there be no such suit or matter, a statement to that effect is necessary, and could be given in a few words, to this effect:—

"That there is not any suit or matter depending in any Court of Equity in relation to the premises ordered to be sold, or any part thereof, to the knowledge of the petitioner."

Printed
forms of
schedules.

Printed forms of schedules, both of incumbrances and rentals, to be annexed to the petition, can be had at any law stationer's, and by adopting them much trouble will be saved.

It would meet the requisites of some of the by-rules

of the Commissioners, and make the petition more perfect, if at foot of the schedule of the lands a short index were added, in the following form :—

TOWNLAND SURVEY AND VALUATION.

County in which Property situate.	Name of Townland.	Barony, Parish, and Poor Law Electoral Division.	Quantity per Ordnance Survey.	Ordnance Valuation.	Poor Law Valuation.	Index to townland survey and valuation.

When the county and barony in which the property is situate are known, the information necessary to fill up this index can (as already shown) be easily obtained at a few shillings' expense, the costs of which the solicitor will clearly be entitled to; and if the tithe rent-charge and quit-rent be stated in separate columns in this index, it will save a great deal of after trouble, and render the petition much more complete.

The draft petition being prepared, the solicitor will require duplicate copies for the use of the Court. The Commissioners' directions provide, that if the petition be signed by counsel, it is his *duty* to see "that the petition and schedules are justified by the abstract, and that the abstract is drawn in a fair and concise form."

Two copies of petition required.

The petition and each of the schedules must be signed by the *petitioner*, if he is to verify the petition; or by his *solicitor*, if the affidavit is to be made by him.

Affidavit
verifying
petition.

The Commissioners' directions require, that the petition should be accompanied by an affidavit of the petitioner or his solicitor, that he has read the petition, and schedules, and abstract of title; and that he believes the petition and schedules to be true, and the abstract of title to be a correct and fair abstract of the petitioner's title. The following form of affidavit has been found to answer, engrossed at foot of the petition and schedules :—

Form of affidavit.

In the Matter of the Estate of A. B., Owner, } E. E., of _____, the
Ex parte C.D., Petitioner. } petitioner in this matter (or
solicitor for the petitioner),
maketh oath and saith, that he has read the foregoing petition and schedules, and the abstract of title accompanying same, and saith he believes the said petition and schedules to be true, and the said abstract to be a correct and fair abstract of deponent's (or petitioner's) title.

Sworn before me, &c.

No stamp on affidavits or documents used in this Court.

There is no stamp upon this or any other affidavits or documents used in this Court, but if it be made in the country, the following by-rule, dated 11th April, 1850, should be attended to :—

Where petition verified before Master Extraordinary.

“The Commissioners direct that no petition verified before a Master Extraordinary in Chancery shall be received in the Office, unless the petition and abstract of title be signed by the person verifying the same, and the following words at foot of the petition and abstract (as the case may be):—‘*Referred to in the affidavit of*

A. B., sworn before me, this day of , 1850.
 ' C. D., Master Extraordinary.' ”

The Commissioners have directed that no petition shall be received unless each page of the schedules thereto is *accurately totted*, both in the original and copy for the use of the Commissioners, and the gross amount of the rental and incumbrances, and interest (when it can be ascertained) shall appear at the end of each schedule.

Schedules petition and copy must be totted.

The schedule of incumbrances should state the names of the mortgagor, conuzor, or other party creating the charge: and the columns of incumbrances and interest should be totted so as to show the total amount.

Schedule of incumbrances.

In doing this the petitioner must avoid the common error of adding annuities to gross sums: arrears of annuities must be added in with gross sums, but the annuities themselves should be placed in a separate column. Carelessness in the preparation of this schedule will disentitle the petitioner to his costs.

Copies of documents accompanying the petition should not be fastened to the petition, but tied up separately and properly indorsed; and it will be convenient that all documents, except the petition and schedule, and copy thereof, should be written on brief paper and tied at the left corner; and on no account should the paper be written on both sides.

Copies of documents to accompany petition.

The General Rule (No. 4) directs that petitions, affidavits, and other documents to be filed in Court should be written on *foolscap* paper, bookwise, and that each page should contain three folios of ninety words each; this

Paper on which petition and other documents to be filed in Court should be.

was found not to answer, and paper specially designed was made and is now in use for petitions and attested copies of documents, and is the proper kind to be used, but in case of copies of deeds, decrees, reports, and other documents to accompany the petition, the Commissioners find that it is more convenient to have them, as now required, written on brief paper, front pages only, and tied at left-hand corner.

In case 2nd schedule consist of Chancery report, petition should state explicitly the entire amount of incumbrances and interest, and costs found due.

Subsequent to the last "further directions," a further by-rule of the Court has been issued, dated 18th March, 1850, by which it is ordered "that no petition shall henceforth be received with which, in lieu of the second schedule of incumbrances, there shall be lodged a copy of a report of a Court of Equity, unless each petition shall explicitly set forth the entire amount of incumbrances stated to be found due by said report, for principal, interest, and costs.

THE ABSTRACT OF TITLE.

Remarks upon the abstract of title lodged by an owner.

If the petition be by the *owner*, the abstract accompanying it should be a concise statement of title to the *property*: the better course is to lodge, in the first instance, such a statement as he would furnish to a lender or purchaser, and it is only necessary to say that he should be as accurate as if he were so furnishing his title; as, at a subsequent stage of the proceedings, the Commissioners examine the abstract as minutely as any lender or purchaser's counsel would do.

To procure deeds.

Where it becomes necessary to make out an abstract, the first step should be to procure the deeds relating to

the title of the estate; if all of them cannot be had, some of them must be forthcoming, or copies, which probably will recite others; and with any clue of that description to the names of the lands and former owners, a careful search should be made in the Registry Office, for at least sixty years back, and the several deeds which appear on record affecting the property sought to be sold should be abstracted. If it be certain that the original or a copy cannot be obtained, the petitioner's solicitor would be justified in at once taking out an attested copy of the memorial; but if the original or copies were afterwards forthcoming, he might not be allowed the expense of the memorials.

Registry search.

Attested copies of memorials.

One of the directions of the Commissioners is, "That in preparing the abstract of title, either to *land*, or to an *incumbrance* accompanying a petition by an owner or incumbrancer, it is not necessary to go back earlier than the earliest deed creating an incumbrance still affecting the premises."

Commissioners' directions as to abstract of title.

This, it will be remarked, relates to the abstract sent in with the petition; but as a perfect abstract of title will be required in the course of the proceedings, it would, it is suggested, be prudent to search back at least sixty years, in case the petitioner's solicitor has no reason to know that there is an abstract of title in any of the parties' possession.

This Registry search should be against the *lands*, and also for the *acts* of the owner and his immediate predecessors. It will be desirable to preserve the evidence of having made this search by keeping the extracts to

Registry search against lands and for acts.

support the charge in the costs, and to show the *exact dates of the registry of each deed*, which must appear on the abstract.*

Search in
Prerogative
Court.

A search in the Prerogative Court for any wills that may have relation to the estate, or the charges on it, will also be necessary.

Abstract by
incumbrancer.

An option is given to the *incumbrancer*, either in the first instance to lodge a perfect abstract of title to the *estate*, or simply an abstract of his title to the *incumbrance*.

If he adopt the course of presenting an abstract of title to his *incumbrance*, it should be very short indeed; for instance, if it be a mortgage granted to himself, he will merely recite the mortgage, and claim to be entitled to it. If the petitioner be the assignee of a mortgage, he will recite the original mortgage, and the assignment of it to himself, and in the same way if he claims as deriving from any party through a will, or as administrator or executor, or by any other derivative title, he should state the original incumbrance, mortgage, or judgment, and show by what right he claims to be entitled to it. A perfect abstract of title to the property will be required in a subsequent stage of the proceedings, even when the petition is presented by an *incumbrancer*; but, if he has not a perfect abstract, it would be the safer course for an incumbrancer not to incur the trouble and expense of making out one in the first instance, as it may afterwards turn out that either the owner or

* The costs allowed for the Registry search are 6s. 8d. for each hour actually and necessarily employed; but in no case to exceed £1 6s. 8d. per day.

some incumbrancer has a sufficient abstract of title to the property.

So much difficulty was experienced by the Commissioners in procuring the attention of solicitors to the several rules and directions which they were compelled, from time to time, to issue, relative to the preparation of the Abstracts of Title, that in November, 1851, the form of an abstract was published, under the authority of the Court, preceded by a reiteration of many of the by-rules, which it was found were constantly neglected.

Commissioners' directions.

Especial attention is therefore required to these rules and forms, which are very explicit; they direct that—

“ In preparing abstracts of title the following rules should be observed :—

“ The abstract of title, previously to its being lodged, and all amendments thereof after it has been lodged, shall be verified on oath.

“ The abstract should be headed with a precise statement of the *lands*, and the *interest therein* to which title is to be deduced ; and this heading should not contain any reference to the petition or order for sale, but the latter document should be annexed to the abstract.

“ Where there are distinct titles to several estates, they should be deduced separately, under distinct heads, up to the point at which the titles are united.

“ All abstracts are to be fairly written on *small.brief paper, on one side only.*

“ The *date* of each instrument, and the *time* of its *registration*, with its book and number in the registry,

Commissioners'
directions.

are to be placed in the outer margin ; and if the instrument be not registered, that fact should be stated there. At the end of the abstract of each deed, it should be stated *by whom it was executed* ; and where the deed is in exercise of a power, the formalities of the execution should be described ; and when enrolled, or acknowledged by a married woman, such fact should be stated. In the case of a will, it should be stated how it was executed, and how attested. In abstracting a will, the date of the probate should be placed immediately under that of the will, and the fact and date of the testator's death should be added in its proper place.

“ The date of the decease of each successive owner should be stated.

“ In abstracting, all duplicate words and redundances are to be omitted ; with this exception, the following parts of a deed should be abstracted fully : namely, the parties ; the recitals, except where they are recitals of deeds or facts previously abstracted ; the statement of the contract ; the habendum, and uses and trusts ; any powers which were exercised. It is sufficient merely to indicate the other clauses of the deed, but no clause should be entirely passed over.

“ In abstracting recitals of deeds already abstracted, they should be stated thus :—

“ Reciting the abstracted indenture of 8th July, 1791 [p. 10].

“ The parcels should be described by referring to the heading of the abstract, unless the mode of description

varies in material points, in which case the substance of the variation should be stated.

“Any exceptions or observations should be accurately stated.”

The following form of Abstract of a common mortgage will point out what is meant. Form of Abstract.

BY INDENTURE between the said John Stokes, of the one part, and William Hartigan, of New Road, in the county of Sligo, of the other part. 21st October, 1816. Registered on the 23rd Oct., 1816. Book X., No. 144, 771.

RECITING the abstracted deed of 7th November, 1812 [p. 9].

AND RECITING a contract for a loan of £8,000.

IT IS WITNESSED that in consideration of £8,000, paid by the said William Hartigan to the said John Stokes (receipt acknowledged), the said John Stokes did grant and release unto the said William Hartigan (in his possession then being) :

ALL the lands and hereditaments stated at the head of this Abstract, by the same description as in the last abstracted deed.—(*Ordinary general words.*)

To HOLD the same unto and to the use of the said William Hartigan, his heirs and assigns for ever.

PROVISO for redemption on payment by the said John Stokes, to the said William Hartigan, of £8,000, with interest at 6 per cent., on the 21st April, 1817.

PROVISO for quiet enjoyment until default.

PROVISO reducing the rate of interest to $4\frac{1}{2}$ per cent., if paid within thirty days, and to 5 per cent., if paid within two months.

COVENANTS by John Stokes for seizin in fee, good title, quiet enjoyment, free from incumbrances, and further assurance.

POWER enabling the mortgagee to sell if the interest be three months in arrear, or if the principal and interest should not be paid within six months after demand.

Executed by John Stokes, but not by William Hartigan.

“If the title be derived under an exercise of the power of sale, it should be stated more fully; and the incidental powers of giving receipts, &c. should be stated.

“Where the Commissioners direct the solicitor to lay the abstract before counsel, he should instruct counsel to advise on the following points:—

1st. Whether (independently of the Incumbered Estates Act) the Abstract discloses a good title to the land or lease ordered to be sold.

2nd. In whom does the Abstract show the title to be vested.

3rd. What charges appear by the Abstract to affect the land or lease.

4th. In whom each charge appears to be vested.
And

5th. To direct suitable registry and judgment searches, both as to title and incumbrances.

“It has frequently happened that from the omission of the 2nd, 3rd, 4th, and 5th of the above heads in the instructions to counsel, the Commissioners have derived but little benefit from the opinion.

“In future the costs of obtaining an opinion will

only be allowed in these cases, in which it is obtained upon all the above heads.

“An index should also be appended denoting at what page of the Abstract the abstracted document is to be found.”

The foregoing rules and forms have reference principally to an abstract of title prepared in the full or complete form, for the purposes of obtaining the Commissioners' directions for searches previous to the sale.

It has been already remarked, that it is not *necessary* that the abstract accompanying the petition, in the first instance, should be so prepared, though it is the more advisable course. The instructions of the Commissioner to submit the abstract to counsel, refers altogether to the direction of searches preparatory to the sale.

The abstract, however, having been prepared, it should be signed by the petitioner or his solicitor, if the petition is to be verified by him; as it will be remarked, that the affidavit verifying the petition also verifies the accuracy of the abstract.

But *one* copy of the abstract is required to be lodged with the duplicate copies of the petition.

Errors in the preparation of the petition and schedules are not sufficient cause for setting aside a conditional order for sale, on the application of an incumbrancer. If the amount or priority of an incumbrance be incorrectly stated, the proper time to apply in reference thereto is, when the Court is settling the final schedule.—*In re Hayes*, 3 I. Jur., 192. *In re Purcell*, 2 I. Jur., 100.

Petition
may be
registered
as a *lis
pendens*.

Having presented the petition and abstract, it is, under the 7th General Rule, competent for the petitioner or any other party interested, to apply for a certificate (which will be obtained from the secretary), that such petition has been filed, and upon that certificate the presentation of the petition can be registered, as a *lis pendens*, in the proper office.

Petition
may be
amended
before order.
Material
amendments
to be veri-
fied. Amend-
ment by
leave of
Court.

Under the 49th General Rule, every petitioner is at liberty, until an order shall have been made on his petition, to amend the same as often as he may be advised; but after any order shall have been made on the petition, no other amendment can be made without leave of the Court; and in all cases of amendment, the material facts, the subject matter of the amendment so sought to be made, must be verified by affidavit.

The petition and abstract having been presented, and any of the proceedings detailed in the next chapter having been commenced, founded upon the petition, no abatement or suspension of proceedings can occur in this Court, rendering any further petition necessary. It is provided by the 30th section :—

No abate-
ment or
suspension
of proceed-
ings com-
menced by
death or
change of
interest.

That proceedings under the Act shall not abate or be suspended by any *death*, or *transmission*, or *change of interest*; but in any such case of death, or transmission, or change of interest, it shall be lawful for the Commissioners, where they see fit, to require notice to be given to persons becoming interested, or to make any order for discontinuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to them may appear just.

Practice in
case of death
of owner.

The practice in case of *owner's* death is, to apply to the Commissioners in Chamber, upon an affidavit stating

the death and upon whom the property devolves, and an order will be made that the proceedings be continued in the name of such party, serving a copy of the order upon him or her; and if the party be a minor, upon the mother or guardian of such minor.—*In re Bolingbrooke and M'Donnell*, 7 Aug., 1850.

Where, however, the *petitioner* dies, and there is no person before the Court to represent the deceased person, the Court will not continue the proceedings under the 39th section.—*In re H. M. Smith*, 2 I. Jur., 175.

In that case the petitioner was also the owner, and Baron Richards remarked, that the meaning of the 39th section is, that the Commissioners should give the required directions when there is any person before the Court who is capable of maintaining his petition, or in the event of the death of the petitioner, being a *creditor*, that *any other creditor* may take the carriage of the petition upon himself.

In cases of change or transmission of interest, an application for liberty to continue the proceedings, grounded on an affidavit stating the circumstances, should be made to the Commissioners, before any further steps are taken.

Where
transmission
or change of
interest.

CHAPTER V.

PRACTICE IN THE OFFICES.—IF NO RULE ON PETITION, HOW TO PROCEED.—CONDITIONAL ORDER.—CAUSE AGAINST SAME.—MODE OF SHOWING CAUSE.—MAKING ORDER ABSOLUTE.—STAYING OTHER PROCEEDINGS.

IF it be any object to the petitioner's solicitor to avoid the necessity for making inquiries at the office to learn whether his petition has been *fiated*, he can leave a stamped envelope with the Secretary or Registrar, entitled in the matter, and addressed to himself, and he will receive notice when the fiat has been made; but the solicitor or his clerk can always ascertain, by reference to the Secretary, whether the petition has been *fiated* or not.

How to obtain information as to orders and proceedings in this Court.

All information required respecting the petition—whether *fiated*, dismissed, or ordered to be amended, or whether conditional, absolute, or other orders, have been made out, or are lying in the office to have blanks filled up—can be ascertained by reference to the Secretary's office. Full information may also be obtained by referring, first to the index of petitions filed, which is kept in the General Clerk's office, and secondly to the

If an order be made dismissing the petition, or if the Commissioners make "no rule" upon it, and the petitioner is dissatisfied with the fiat, the course to be adopted is to lodge a docket, entitled in the matter, in the shape of a notice, with the Secretary, to this effect :—

<p>In the Matter of A. B., Owner, <i>Ex parte</i> C. D., Petitioner.</p>	}	<p>The petitioner desires to have the matter of his petition moved in Court.</p>
		<p>Dated day of 1850.</p>
		<p>Solicitor.</p>

If a conditional order be made on the petition, it will

COURT MOTIONS.

1. To rescind an order. 2. To vary a fiat. 3. To make an order absolute.
4. To appeal against report. 5. To take carriage of proceedings, if not
founded on delay or default. 6. Motions directed by any of the Commis-
sioners to be heard in Court. *All other motions will be heard in Chamber.*

Conditional order.

be made out, as a matter of course, in the office; and the first duty of the solicitor is to read the draft of the order, for the purposes stated in the following by-rule of the Court, dated 31st January, 1850:—

Draft should be examined by solicitor.

Solicitors are requested to read the draft of the conditional order made upon any petition presented by them, previous to same being entered and engrossed, and to satisfy themselves that the lands and premises therein mentioned are correctly described, as much inconvenience has resulted in consequence of amendments having been required by them in such orders, in respect to names of lands and otherwise, and the consequent alteration in the order-books of the order, after same had been issued.

The conditional order will direct a sale, unless cause be shown within, generally, ten days, if there be any suit pending in Chancery, or twenty-eight days if not (or within such other period as the Commissioners fix), after service of the order upon the person named in it.

Service of conditional order.

Copies of the order must be served on the parties named, *but not through the Notice Office*; personal service is not necessary; and in case a party directed to be served is out of the jurisdiction, or that service at his residence cannot be effected, an order to substitute service will be made in Chamber, upon an affidavit showing proper grounds.

Necessity for ascertaining by which Commissioner fiat made.

It may be here remarked, that the solicitor should ascertain by which of the Commissioners the petition has been fiatd. This will be found out in the office by reference to the fiat on the petition; and any application—such as to substitute service, or to dispense with

the necessity for serving any particular party, and *all future applications* in the matter, properly moveable in Chamber—must be made before the Commissioner who *fiated* the petition.

Application
to substitute
service.

The following by-rule of the Commissioners should be attended to, in bringing forward any motion in the matter :—

28th February, 1850.—It is hereby ordered by the Commissioners, that each solicitor having any motion, in Court or Chamber, before the Commissioners, shall be prepared with a copy of the petition, schedule, and abstract of title, or statement of facts, as the case may be, and an attested copy of the affidavit, on which he may rely, to be used in such motion.

Documents
necessary on
all applica-
tions.

The conditional order having been served on all parties as directed by it, or any substituted service having been effected, the time allowed for showing cause will, when it is to be computed by days, be exclusive of Sundays, and also exclusive of any of the following days that may intervene—namely, Christmas-day and the three succeeding days, New Year's-day, Good Friday, Easter Monday and Tuesday. When the time is to be computed by months, it is the calendar month; and in all cases, in computing time, it must be exclusive of the first and inclusive of the last day, unless the last day be one of such holidays, when the following day must be included.

Time how to
be computed,
1st & 2d Ge-
neral Rules.

In case no cause be shown, an affidavit will be necessary to verify the services of the order; the affidavit should recite the order, and show when and how the service was effected; and as in many cases solicitors

Affidavit of
service of
conditional
order.

for parties in Chancery, and other causes and matters, are directed to be served, the affidavit should state the fact, that the solicitor served is the solicitor for the party in the cause or matter mentioned in the order.

Affidavit not to be received with interlineations, unless noticed in *jurat*. How to be taken by Master Extraordinary.

The affidavit of service must be filed in the office, and a copy bespoken, or an attested copy can be brought in at the same time. There are General Rules in this Court (64 and 65) similar to the Chancery Orders, directing that affidavits shall not be received with interlineations, unless noticed in the *jurat*, and providing that affidavits taken before a Master Extraordinary of the Court of Chancery (who are authorized under the 13th section of the Act to take same), must be transmitted in a sealed envelope.

Certificate of "No Cause."

The Notice Clerk, upon examining the affidavit, and ascertaining that the time for showing cause has elapsed, will give a certificate of "no cause" having been shown; and upon this certificate an absolute order will be made out in the Secretary's office, as a side-bar order, and without application to the Commissioners.

How to proceed in showing cause.

The proceeding, where a party is desirous of showing cause against the conditional order is regulated by the General Rule, No. 9, which is as follows :—

That in any case in which a party shall seek to show cause against, or to set aside any order made by the Commissioners, he shall lodge a notice to that effect in the office, and state at foot, or on the back thereof, upon what party he requires such notice to be served, and the subject matter of such notice shall come on to be heard in due course before the Commissioners; and the Commissioners, on the

hearing of such matter, shall make an order to vary, or to discharge the order already pronounced, or direct a reference to one of the Commissioners, or make such other order as they shall think fit; and may order the whole, or any portion of the costs, up to and including the hearing of such matter, to be paid by such of the parties as they shall think properly liable thereto.

The party showing cause should enter his name and address in the Appearance Book, pursuant to the 43rd General Rule, and if he intends to rely upon an affidavit or other document, he should, of course, give notice of it, and the notice may be to the following effect :—

Party showing cause should enter appearance.

In the Matter of the Estate
of A. B., Owner,
Ex parte C. D., Petitioner. } A. B. (the owner), or D.F. (a third party, as the case may be), shows cause against the conditional order for a sale, made in this matter, on the day of , and the said A.B. will rely upon an affidavit this day filed in the proper office, and the documents therein referred to as cause against the said conditional order being made absolute.

Form of notice of cause.

Dated this day of

To solicitor.

This notice should be directed to the petitioner's solicitor, and a copy of it for service, and a second copy to lodge with the Notice Clerk should be brought into the office.

The mode of serving notices through the Notice Office is regulated by the 44th and 45th General Rules, which direct :—

Notices—mode of serving.

That any notice or order which may require to be served in any matter shall be lodged with such of the officers of the Court as the

Commissioners shall appoint for that purpose, and shall be served in manner hereinafter mentioned, through the office of such officer, unless the Court, or a Commissioner, when sitting alone upon any matter referred to him, shall otherwise order; and such notice or order may be transmitted by the post, by the clerk or officer so to be appointed for that purpose; and the certificate of such clerk or officer, of the sending by the post of such notice or order, shall be sufficient proof that such notice or order was duly served at the time when the same would reach the said address in the ordinary course of the post.—General Rule, 44.

That whenever a notice or order shall be lodged in the Notice Office, for the purpose of being served, the person lodging the same shall, at the same time, bring in and lodge as many copies of such notice or order as such person shall require to be served, and shall also at the same time bring in and lodge in the office as many covers or envelopes, with a sufficient postage stamp affixed on each, as may be necessary for the purpose of transmitting such copies free by post; and upon which envelopes or covers shall be legibly written by the party bringing in the same the address of the parties respectively on whom such copies are to be served; and it shall be the duty of the officer to compare such copies with the notice, and to correct the same when necessary, and also to compare the address on each cover or envelope with the address mentioned at the foot of such original notice, and to see that the same is correct. And that all notices to be served through the Notice Office shall be lodged in such office before the hour of two o'clock on the day upon which it is required that the same shall be sent.—General Rule, 45.*

Precise point
relied upon
as cause
should be
shown.

If the party showing cause relies on any bills or answers filed in the Court of Chancery, they should be stated in the notice; and the notice should show the

* The party serving a notice is responsible for its correctness, and the Notice Clerk is not required to compare the notices.

point intended to be relied upon. It is not sufficient to serve a notice merely stating that a bill, or answer, or decree will be relied on; the particular matter intended to be shown as cause against the conditional order should be plainly set out; for if, in consequence of a vague notice, relying on bills and answers, the petitioner should take out copies of them, no matter how voluminous, the party showing cause will have to bear the expense, and the cause will be disallowed.—*In re H. W. Knox*, 2 I. Jur., 147.

The Commissioners have held that the party showing cause is bound to furnish copies of the documents in his possession, on which he relies, on payment of scrivenery charges; or that he would be compelled to pay the costs of a special application for the purpose.—*Anon.*

It will be seen by the following rules, that, in showing cause, or in any other proceeding in this Court, all Chancery or Law pleadings or documents can be used, and that no technical objections to an affidavit will be listened to.

All affidavits, answers, and all other proceedings that could be read and relied upon in any of the superior courts of Law and Equity, may be read and relied upon before the Commissioners, subject to all just exceptions; and copies thereof, purporting to be attested by the proper officer, shall be considered as *prima facie* evidence thereof (66th General Rule).

Affidavits and other documents used in Equity or Law Court may be read.

And the Commissioners shall not be bound to reject any affidavit, by reason of any irregularity in the heading of the *jurat* thereof, or by reason of non-compliance with any of the preceding rules (67th General Rule).

No technical objection to affidavit allowed.

A great deal of the valuable time of the Court has been expended, since it sat, in hearing motions in which, upon the most frivolous grounds, cause was sought to be shown against the conditional order; so much so that in the general directions of March, 1850, the following are given :—

Nothing will be allowed as cause against making absolute the order for sale, unless it shows that the petitioner is not entitled to have the lands sold for payment of his demand, under the statute. In showing cause, it is a common error to rely too much upon imperfections or omissions in the petition, or on the supposed superior merits of some other petition. The proper course for the creditor, generally, is to let the order be made absolute, for the benefit of all the creditors of the estate. He may then apply for the carriage of the proceedings, if the sale can be more speedily or advantageously conducted, or the interests of the owner and creditors be promoted by transferring the carriage to him. The petitioner will then be required to amend his petition, if it is imperfect or inaccurate; and the costs of such amendment will generally not be allowed.

Injury likely to result to owner or parties interested is not cause; it may be grounds for delay in sale.

The consideration of what is sufficient cause against a sale is, therefore, limited to this, "Is the petitioner entitled, under the Statute, to have the lands sold for payment of his demands?" No matter what supposed or real injury that may be shown as likely to result to the owner or any other party interested, by making the order absolute, it should be understood that considerations of that description are not grounds to prevent an incumbrancer availing himself of the provisions of the Act; at the same time, where a clear case can be made out for a postponement of the sale—such as the owners being on the eve of procuring money to pay off

the petitioner and other incumbrancers, the Commissioners have made the order absolute, but directed no further proceedings for a limited time.

The application for a postponement, or to stay proceedings, however, is quite distinct from "showing cause," and it would be by far the better course for the party desiring to postpone the sale to make the application in Chamber to the Commissioner to whom the matter stands referred, and if there be substantial grounds for it, the fact of the order having been made absolute does not make his position worse.

Application for postponement or delay should be after absolute order.

In the case of *Lord Portarlington's Estates*, the cause shown as grounds against the absolute order was, that Lord Portarlington had made great exertions to improve the condition of his property, and had effectually succeeded in averting the progress of several Chancery suits, in which it was sought to sell the estates, and had paid off large charges, which were vested in himself. It also appeared that the rental was about £33,000 a-year, and the incumbrances nearly £700,000, but that creditors, to whom about £275,000 were due, assented to the application to prevent a present sale. The petitioner's judgment was for a principal sum of £318 only. It appeared, however, that the entire property was in the hands of receivers.

Re Lord Portarlington's estates, cause disallowed.

In this case the order was made absolute. Baron Richards, C. C., remarked, that the Court would be always open to any application to defer sales, but that the very circumstance of the whole rental being administered by receivers brought this case strongly within the policy of

Remarks by Baron Richards.

the Act, and would, of itself, induce the Court to disallow the cause.

It is not cause that time for equity of redemption has not elapsed if interest in arrear. Nor that there is a decree for a sale and most of preliminaries gone through.

It has been already remarked that it is not cause against a conditional order that the time for redemption in a mortgage had not elapsed, if the interest be in arrear; nor that there is a decree of the Court of Chancery for a sale, and that most of the preliminaries had been gone through in that Court.

Where owner relies on 22nd section.

Supposing, therefore, the petitioner's demand to be an incumbrance within the meaning of the Statute, the only grounds that the owner can rely upon as cause against the sale are pointed out by the 22nd section of the Act, and are simply these:—

1st.—That no part of the land or lease is subject to any receiver, or in possession of any incumbrancer.

2nd.—And that the amount of the yearly interest on the incumbrances and other yearly payments in respect of charges payable out of such land or lease, do not exceed one-half of the nett yearly income after payment of all tithe rent-charge, and such part of the county cess and poor rate as is payable by the owner, and all crown, quit, and head-rent.

How he should proceed, 10th General Rule.

In case the owner conceives he can bring his case within that section, the 10th General Rule should be attended to, which provides:—

“That, if the owner shall rely upon the provisions of the 22nd section of the Act, in opposition to a sale, he shall file an affidavit containing all the particulars required by that section; and also stating, as nearly as he can, how much has been received during each of the seven years immediately preceding the presentation of the

petition for the rent and arrears of rent, of all the premises subject to the incumbrance of the petitioner, and how much has become due during that period for tithe rent-charge, poor's rate, and county cess."

It will not be sufficient, in compliance with this order, to show the average income for the last seven years; the actual income must be shown—*In re Harriet Mahon*—and unless the affidavit be clearly satisfactory, a reference will be directed to the Master, to ascertain what was due, and what the yearly profits of the estate were, and the costs of the proceedings will be reserved to abide the result of the inquiry.

Reference may be directed to ascertain yearly profits of estate. Costs to abide result.

It may be here noticed, that an affidavit to sustain a statement of cause is a very legitimate subject for the consideration and settlement of counsel. It may possibly be required to raise a question of law, by putting in issue a deed or other document, intended to be relied upon as cause; and it appears to be as much a fit subject for counsel's perusal and settlement as an answer to a bill in Chancery, or other important pleading. However, no provision is made for counsel's fee; and in the matter of the *Estate of Jennings*, an appeal against the officer's taxation of costs, on the grounds that the fee to counsel, in settling affidavit showing cause, was disallowed, there being no such fee in the schedule; but, at the same time, Baron Richards intimated, that if the Committee of the Law Society had suggested that allowance, it would have been made, as he considered it very reasonable.

Costs. Counsel revising affidavit or statement of "cause."

The course of the petitioner's proceeding upon re-

ceiving the notice of cause is pointed out by the 68th General Rule, which provides :—

That whenever a party served with a conditional order shall file an affidavit, or rely on any other matter as cause against such order, and shall give notice thereof, and the party obtaining such conditional order shall not, within the time specified in such *conditional order*, or within four days after the expiration thereof, serve notice of motion to make the same absolute, the party opposing such order shall be entitled to have an office rule entered, allowing the cause shown as an authority for taxing the costs of resisting such conditional order; and such costs shall be taxed accordingly: and upon the entering such office rule, and not before, the cause shall be deemed to be allowed.

No case to
counsel al-
lowed to ad-
vise as to
cause shown.

If the petitioner considers the cause shown is not maintainable (and it may be here again remarked that the petitioner's solicitor is not allowed the benefit of counsel's advice, at least, if he be advised by counsel, he will not be entitled to the fee he must pay him), it will be necessary, *within four days* after the expiration of the time limited in the conditional order, for the petitioner to serve a notice of motion to make the order absolute, which notice may be in the following form :—

COURT MOTION.

Form of no-
tice of mo-
tion to make
absolute the
conditional
order, not-
withstand-
ing cause.

In the Matter of the Estate	} Take notice that counsel on behalf of
of A. B., Owner,	
<i>Ex parte</i> C. D., Petitioner.	

the petitioner will on next, or first opportunity after, move the Court to make absolute the conditional order made in this matter on the day of last, notwithstanding the cause shown by A.B., and for the costs of the application; which motion will be grounded on the petition and abstract of title (and add such other documents as it shall be necessary to use).

Dated, &c.

Two clear days' notice of this and every other motion must be given, and the notice should be, of course, transmitted through the office, and copies will be required (besides those for service) for the office, and *two* copies for the Court, and the solicitor should also get a copy with the services marked by the Notice Clerk for his own use.

In case the petitioner's solicitor (by mistake) omitted, within the time limited by the 68th General Rule, to serve the notice of motion to make absolute the order, the Court, on application by the petition on a proper case, will make a new conditional order, and direct cause to be shown forthwith.—*In re J. W. M. Wall*, 2 Ir. Jur., 92.

In case time to serve notice elapsed by mistake.

In case, however, the application to set aside an order, entered under the 68th General Rule, be delayed beyond two or three days, the Court will not rescind the order.—*In re Anne Ruskell and Others*.

As to whether the petitioner is entitled to use affidavits to be made in reply to affidavits put in as cause, it was remarked, in the same case, by Mr. Commissioner Longfield, that he was of opinion "that it would be a mischievous practice not to allow affidavits to be filed answering those filed as cause; the practice of the Court was to allow them to be used, and if there was any surprise the Court would give time to the other side. It appeared to him very oppressive to allow objections to be raised in the first instance, without affording an opportunity to answer them."

Rebutting affidavits on motion to show cause.

Remarks thereon by Commissioners.

From this case it would appear that the petitioner

will be justified, in case he thinks it necessary, to answer the affidavit filed as cause; but, unless there are questions of *fact* in dispute, or requisite to be relied on, a further affidavit will not be required.

Application to enlarge time for applying to make order absolute.

An application can also be made to enlarge the time for applying to make the order absolute, in cases where further affidavits are necessary, and could not be procured in time.

In case notice to make order absolute not served or time extended, cause deemed allowed with costs, and side-bar rule may be entered.

It will be seen by the 68th General Rule, that if the petitioner neglects to serve the notice of motion to make the conditional order absolute, within the proper time, or does not procure an extension of time for the purpose, the party showing cause will be entitled to obtain a side-bar rule, allowing the cause shown with costs. This rule will be obtained as a matter of course in the office, upon showing the service of notice under the 9th General Rule, the conditional order, and affidavit of service, and certificate from Notice Clerk that no notice of motion has been lodged to make order absolute.

With respect to what is or is not cause against a conditional order for sale, the following cases have been decided:—

By a mortgage of 1806 the lands of X. and Y. were conveyed to B., to secure a sum of money advanced by him to the owner. In 1826, B. filed his bill to raise the amount of his mortgage out of the lands of X., but omitted therefrom any mention of the lands of Y. In 1830 a final decree was pronounced in that cause, directing the lands of X. to be sold. By indenture of the year 1836, and other mesne assignments, the mortgage and

all the benefit of the decree became vested with petitioner. In 1837 the petitioner filed his bill, to carry the decree of 1830 into execution; and a final decree for a sale was made in that cause in 1844, but still confined to the lands of X. A receiver under the Court of Chancery had been in possession of the lands of X., but the lands of Y. had remained all along in the possession of the owner. On motion to make absolute the order for the sale of Y., the above facts having been proved, the cause shown was allowed with costs.—*In re Davis*, 3 I. Jur., 143. See also *Busby v. Seymour*, 1 Jo. & Lat., 527; 7 I. E. R., 433.

Where, however, the principal incumbrancer on estates A. and B. presented a petition for the sale of B. only; and, having obtained an absolute order for sale, applied to the Court for a conveyance, without proceeding to a public sale; and obtained such order, notwithstanding the opposition of a judgment creditor, prior in point of date, but the validity of whose incumbrance was disputed in point of law; and he subsequently paid a sum of money on account of the judgment, in discharge of estate B., which was duly conveyed to him, he agreeing to accept the conveyance as a foreclosure, but did not take any assignment of the judgment; it was held that he was entitled to a sale of estate A., on foot of the sum paid by him on account of the judgment, the above facts having been relied upon as cause against the conditional order.—*In re Coen*, July, 1853. An appeal was permitted in this case, which was withdrawn, the matter having been compromised.

In re Vance. The lands of A. and B. were jointly mortgaged for £150. A. became vested in the owner in this matter, in exoneration of B., and B. became vested in the party now showing cause. Subsequently, the petitioner advanced to the owner a further sum of money, and obtained an assignment of the original mortgage. A railway company having occasion for part of A., paid to the petitioner the sum of £250 for it. A conditional order for the sale of A. and B. having been obtained, it was held, on these facts being shown as cause, that the petitioner was bound to apply this sum in payment of the first mortgage.—*In re Vance*, 3 I. Jur., 247.

In re Rogers Where, upon the bond creating the petitioner's incumbrance, there was an indorsement by the parties to the effect that, notwithstanding it was made payable in twelve months, the creditor agreed to accept payment by instalments, until the whole debt with interest was discharged, but in case any of the instalments should not be paid as therein specified, or within two months thereafter, provided demand made; or, upon such demand being made after the expiration of two months, then the agreement to be null and void. A small arrear became due, and the owner being absent from Ireland, it became difficult to serve him with notice; it was held that the omission from the petition of all mention of the endorsement, and the facts connected with it, was not cause against a conditional order for sale.—*In re Rogers*, 3 I. Jur., 192.

In re Beechers. Where a party showed cause against a conditional order for sale, adversely to a will in which he had

acquiesced for ten years, the Court made the order absolute, without concluding the question as to any rights the party might establish upon such motion as he might be advised to make.—*In re Beechers*, 3 I. Jur., 199. See also *In re M'Clintock*, Id. Ibid.

The owner was entitled to three classes of estates, In re Green. and a petition was presented by an incumbrancer, whose charge affected one only of these classes, upon which a conditional order had been obtained for sale of the portion affected by the demand. A petition for sale of all the estates having been presented by the owner, for payment of incumbrances affecting the whole property, and these facts being relied upon as cause against the order obtained by the incumbrancer, the Court stayed all proceedings upon the incumbrancer's petition, but gave him his costs thereof, and of the motion.—*In re Green*, 2 I. Jur., 28.

Where a suit was pending in Chancery, for sale of In re Big the entire lands, and a petition was presented in this Court for the sale of the same lands, an order was made for sale of so much of the lands as was within the jurisdiction of this Court, and a certificate granted that it would be for the benefit of all parties that the Chancery cause should proceed as to the residue.—*In re Biggs*, 2 I. Jur., 28.

But where a portion of the premises was intermixed In re Cairncross. with other premises not within the jurisdiction of this Court to sell, the Commissioners refused to make absolute the conditional order as to the portion over which they had jurisdiction, it appearing that a sale of the

whole premises could be more advantageously had in the Court of Chancery.—*In re Cairncross*, 2 I. Jur., 69.

In re Purcell.

Where the abstract of title to a petition by a jointress stated the jointure to be secured by a trust term, the contrary being the fact, and the petition claimed £80 more than was really due for arrears of the jointure, the conditional order was, nevertheless, made absolute; but the solicitor was declared disentitled to his costs as against the funds.—*In re Purcell*, 2 Ir. Jur., 100. See also *In re Hayes*, 3 I. Jur., 192.

In re Wall.

It is not cause against a conditional order for sale that the owner had, as was alleged, been prevented by the incumbrancer's mode of dealing with the lands from recovering the rents of the estate, and, therewith, keeping down the interest on the charges.—*In re Wall*, 2 Ir. Jur., 92. *In re Prendergast*, 2 Ir. Jur., *supra*, p. 17.

In re Bodkin.

In *Bodkin's* case, 2 Ir. Jur., 14, upon cause shown against a conditional order for sale by the owner of an undivided third of the estate, the cause was allowed as to him, he paying his proportion of the petitioner's demand, and of the costs of the petition.

In re Orpen.

Where a party showing cause against a conditional order is not in a condition to prove his rights, in consequence of the deeds being in the possession of the petitioner, the Court will not order the deeds to be lodged in Court, but will make the conditional order absolute in the first instance, upon which the petitioner will be compelled to lodge the deeds in Court.—*In re Orpen*, 3 Ir. Jur., 208.

A notice to show cause against a conditional order for sale should state the matter relied upon, and not merely refer to a bill answer and decree in Chancery suit.—*In re Knox*, 2 Ir. Jur., 147.

Where, upon a motion to show cause against a conditional order for sale being called on by the Court, neither party appears, the party serving the notice of cause is at liberty to enter a side-bar rule allowing the cause.—*In re Foster*, 2 Ir. Jur., 132.

The cases already cited, *supra*, Chaps. 1, 2, and 3, on the subjects of the jurisdiction of the Court; the nature of the incumbrance necessary to be vested in the petitioner; and the quantity of estate required in the owner, are all authorities, and should be referred to on the subject of showing cause against the conditional order for sale; as of course any want of jurisdiction in the Court, or insufficiency of title either in the petitioner or owner, would be good cause against making absolute the conditional order.

When the cause shown has been disallowed on motion, the solicitor for the petitioner should be careful that the several documents used upon the discussion of the motion shall have been entered by the Secretary or Registrar in his notes, so that they may appear upon the order to justify the charges made for them in his costs; and, for this purpose, at the rising of the Court, or on the earliest opportunity, the petitioner's solicitor should request the Secretary or Registrar to refer to his notes, and should bespeak the absolute order.

The following is a by-rule of the Court in reference to all Court motions:—

Solicitors are also requested to observe, that in many instances the Secretary is unable to prepare the drafts of the orders for want of the solicitors furnishing him with the necessary documents and information. In any case, therefore, where the Secretary has not orders ready to issue, the solicitors are required to apply to him in person, and supply the documents and information necessary for the completion of such orders.—22nd March, 1850.

The effect of the absolute order is to stay all other proceedings towards a sale. The 42nd section provides :—

After order by Commissioners for sale, proceedings for a sale under decree to be stayed, and no suit, &c. to be commenced without leave of Commissioners, pending proceedings under the Act.

That where the Commissioners shall order the sale of any land or lease, or part thereof, in respect of which any decree shall have been already made by a Court of Equity for sale, or any proceedings shall be *pending* in a Court of Equity, they shall, by certificate under their seal, notify to such Court the order so made by them; *and all proceedings for or in relation to a sale* under the decree of such Court shall be stayed, and upon the completion of the sale under such order of the Commissioners any receiver appointed by such Court shall cease to act as such receiver with respect to the land or lease, or part thereof, sold; and it shall be lawful for the Court to suspend or stay any other proceedings in such Court, or under any order or decree already made by such Court, as the Court shall think fit; and pending any proceedings for a sale under the Act it shall not be lawful for any owner, or person claiming to be owner within the meaning of the Act, or claiming by the act of such owner or person, or by act of law, or any incumbrancer, to commence any proceedings at Law or in Equity for *redemption, foreclosure, or sale*, or to commence, take, continue, or prosecute any proceeding whatsoever under the Act of the last session of Parliament, “to facilitate the Sale of Incumbered Estates in *Ireland*,” without the leave of the Commissioners.

In cases where there are pending suits in the Court of Chancery, the Secretary to the Commissioners will, in pursuance of the preceding section, at the same time that he issues the absolute order, transmit a notification thereof to the Lord Chancellor. The Commissioners in some cases grant a certificate that it is expedient or necessary that a report should be made up, or other such proceeding in the Chancery cause. In cases where considerable progress has been made in a cause towards obtaining the Master's report, or where, from the peculiar circumstances of the case, a report would be necessary or desirable, an application in Chamber, on notice to the parties, may be made for such certificate.

Staying
Chancery
proceedings.

Certificate of
Commission-
ers for leave
to proceed in
Chancery.

Where an order for sale of lands has been made by the Commissioners, and a certificate transmitted to the Court of Chancery, the latter Court is bound by the 42nd section to stay all suits or proceedings in which a decree for a sale of the same lands has been pronounced; but where no such decree has been made, that section leaves it at the discretion of the Court whether or not to stay any *other* suits or proceedings, even although their object should be to procure a decree for a sale of the same lands.—*Bernard v. Bond*, 1 Ir. Ch. Rep., 198.

Bernard v. Bond.

Subsequently to the institution of a foreclosure suit, and to the filing of the answer of several defendants in that suit, who were incumbrancers prior to the plaintiff, a petition was presented by a near relative of those defendants in the Incumbered Estates Court, and an order was made thereon for a sale of the mortgaged premises.

Afterwards a motion was made, under the 82nd General Order of 1843 (Chancery), on behalf of those defendants, to dismiss the bill for want of prosecution; the Court of Chancery, however, refused the motion, with costs; but *proprio motu* stayed the suit.—Ib. See

Money Penny
v. Gibbings.

also *Money Penny v. Gibbings*, 1 Ir. Ch. Rep., 201.

Where, however, the Court was of opinion that a suit had been wantonly and vexatiously instituted, a motion by the plaintiff therein to stay his own suit, under the 42nd section, was refused with costs; and it was ordered that, if he did not file a replication within a short specified period, his bill should stand dismissed against one of the principal defendants, with costs, including the costs of a contemporaneous motion, made on her behalf, for its dismissal for want of prosecution.—*Money Penny v. Gibbings*, 1 Ir. Ch. Rep., 201.

Murphy v.
Sealy.

A petition for a sale having been presented in this Court, but no order made, a petition for a sale and receiver was presented to the Court of Chancery. The latter petition charged that the former petition had been presented by the mortgagor, in order that he might continue in the receipt of the rents until a sale took place, and that, in consequence of the arrear of business in the Incumbered Estates Court, it was not probable that an order for a sale would be made for a long time. Although, at the bar, the mortgagees offered to waive all relief under their petition, except the appointment of a receiver, the Court of Chancery refused to make any order upon their petition, and compelled them

to pay the respondent (the mortgagor) the costs of bringing him before the Court.—*Murphy v. Sealy*, 1 Ir. Ch. Rep., 228.

A receiver, however, may be appointed or extended under the Sheriffs' Act, though an order for sale has been made by the Commissioners.—*Corban v. Mount-cashell*, 1 Ir. Ch. Rep., 234.

The Court of Chancery will make a summary order, under the 15th section of the Court of Chancery Regulation Act, upon a cause petition filed by an incumbrancer and annuitant, praying—not redemption, foreclosure, or sale—but the appointment of a receiver over lands subject to his (the petitioner's) incumbrance and annuity, although a petition for the sale of the same lands has been previously presented in the Incumbered Estates Court by the owner of the lands.—*Carter v. Carter*, 1 Ir. Ch. Rep., 592.

CHAPTER VI.

CARRIAGE OF PROCEEDINGS.—APPLICATIONS TO RESCIND, VARY, OR SET ASIDE ORDER.

Applications
for the car-
riage of the
proceedings.

Few subjects have engaged more of the Commissioners' time, from the establishment of their Court, than applications for the carriage of the proceedings. The question has been one prolific of contention between owners, petitioners, creditors, and their solicitors. At first, the practice was a little unsettled, but by degrees it assumed a distinct and intelligible shape, and is now tolerably well understood by the profession.

There are *two* stages at which the application can be made, and upon grounds which may be divided into two classes. The first is immediately upon the order for sale being made absolute. At that stage of the proceedings, the usual grounds upon which it is made are, that the owner or other party applying has a more substantial interest in successful, expeditious, and inexpensive proceedings to effect the sale, or has greater facility to bring the property to sale, than the petitioner. At this stage of the proceedings, it would no doubt be a good ground for the owner's asking for the carriage of the proceedings, if he could clearly show he had a fair prospect, by judicious and economical

management, of having a residue; or if it could be shown by an incumbrancer that the petitioner had no probable prospect of being paid, and that consequently the proceedings by him would be a mere speculation by his solicitors to reap the benefit of a bill of costs. When the application is made at this early stage of the proceedings, upon any of the grounds suggested, it is a *full Court* motion; if, however, the application arise out of the slow conduct of the proceedings by the party having the carriage of them, it will, of course, occur at a later stage of the proceedings, and then being simply on the ground of delay or default, it is properly moveable as a *Chamber* motion.

Early in the progress of the Court (March, 1850), the Commissioners found it necessary to publish certain directions, showing the circumstances that would influence them in determining applications for the carriage of the proceedings. These directions are as follows:—

The Court, in determining who ought to have the carriage of the proceedings, will be influenced solely by the consideration of what is most for the advantage of the parties interested in the estate. In motions for the carriage of proceedings the Commissioners must necessarily be governed by the special circumstances of each case; but generally, they will prefer the *owner* where the estate is *clearly solvent*; or a *mortgagee* who obtained the possession of the *title-deeds*, and counterparts of tenants' leases, with an abstract of title and searches, as part of his security at the time when he advanced his money; or a party who, under a decree of a Court of Equity, or otherwise, may have already taken useful steps towards effecting a sale.

Commissioners' directions as to carriage of proceedings.

Any party conceiving that material facts or circumstances of title

have been concealed from the Commissioners, may bring the same to their notice; and if such omission appear to have arisen from the default or negligence of the petitioner, the Commissioners will dismiss the petition, or require it to be amended, and may consider the petitioner disentitled to the conduct of the proceedings.

A great variety of cases were decided prior and subsequently to these directions, and the Commissioners were of course guided by the different circumstances of each case; but they appear to be principally influenced in making orders on the subject by the simple consideration as to who is most likely to bring the estate to a satisfactory sale, with all reasonable speed, and at the least expense. In considering these questions, it must, no doubt, be an important ingredient to show, as clearly as may be, an estimate of the probable value of the estate, the amount of incumbrances, and to whom the residue will most likely be coming.

Remarks on
carriage of
proceedings.

With regard to the importance to the owner of having the carriage of the proceedings, if he expect a surplus, he certainly can procure the best information as to the estate and tenancies, and get the various notices served at less expense, and he will be better able to select desirable lots, and induce offers and competition for the purchase; and the Court allows more latitude to an owner, who is the petitioner, in bringing the estate to a sale, than in the case of a petition by an incumbrancer, where it appears that no injury is likely to arise to the creditors. Yet the costs which may be saved by rendering the preliminary proceedings to ascertain the tenancies unnecessary, and procuring the services on

the tenants of the final notice, will scarcely make a difference of £20 in the expense of the sale (where there are forty or fifty tenants); as the forms must be complied with, no matter who has the carriage of the proceedings; and it should be borne in mind, that it is, in fact, *the Commissioners* who do the business, examine the title, direct searches, and sell. The owner or other party interested can take part in every stage of the proceedings; he can attend at the settlement of the rental, the decision as to the mode of advertising, the selecting and dividing of the lots; and the reasonable views of every one interested will be attended to by the Commissioners. And where a solicitor has an abstract of title, counsel's opinion and searches, or other documents which would save expense and would be useful, it is not necessary that he should be the solicitor having the carriage of the order, to lodge such documents, and have them made available, and to be paid for them out of the proceeds of the sale, if not previously paid. So that, unless there are some strong and special grounds, the Court do not, in general, take the carriage of the proceedings from the party who presents the petition.

There have been so many cases decided by the Commissioners on the subject of the carriage of proceedings, that it is difficult to make a selection which would fully convey the several circumstances which have influenced their decision. In the cases of *Lord Gort's*, *Lord Portarlington's*, *Lord Glengall's*, "*The Martin Estates*," and several others, the question of the carriage of the proceedings has been the subject of very anxious debate,

and the Commissioners have delivered elaborate judgments; the point, however, appears to be still one of considerable interest, and the constantly recurring applications on the subject would seem to justify a rather full consideration of some of the judgments of the Commissioners.

Edward
Deane Freeman's Es-
tate.

In the case of *Edward Deane Freeman's Estate* the petition was presented by a party who was fully entitled, under the Act, to require a sale, but whose interest in the estate, and means of information in regard to it, were not greater than are usually possessed by a mere judgment creditor; the petition was, however, fairly presented, and there was no objection on that head: but an application was made by a party who had a very great interest in the estate, who had taken proceedings in Chancery for a sale, had made out title, had possession of the muniments, and acted with the concurrence of the owner and his family. He was also free from imputation of delay or improper conduct, and he came forward with a *bonâ fide* intention to sell; and the carriage of the proceedings was, under the circumstances, transferred to him.

The same principle was followed in the case of *Lord Portarlington's Estate*.

Lord Gort's
Estate.

In *Lord Gort's Estate* an application was made by the owner to take the carriage of the proceedings from the petitioner, a first incumbrancer, who had possession of the title-deeds, the tenant's leases, and everything necessary to make a perfect title to a purchaser, a power of sale in his mortgage, to enable him to sell at his own

discretion, without the concurrence of any person ; but the Commissioners refused the application, although it was alleged that there would be a large surplus, and although the petitioner was charged with being desirous to purchase the estate himself.

The next case of any importance was in the "*Martin* The "Martin" Estates. *Estates*," for sale of which the second incumbrancer presented a petition, and for the carriage of the proceedings an application was made by the Law Life Insurance Company, who had the first incumbrance to an amount exceeding £160,000. In that case, after very considerable debate, the Commissioners handed over the carriage of the proceedings to the first incumbrancer, who was in possession of the title-deeds ; although it appeared on the motion, that, before presenting the petition, the puisne incumbrancer had applied to the Law Life Insurance Company to know if they would bring the property into this Court, to which an express and unequivocal refusal was given.

In *Lord Glengall's* case, an application was made on Lord Glengall's Estate. behalf of several creditors on the estate to have the carriage of the proceedings transferred from his Lordship, on the ground that personally he had no interest in the result, as the estate was fully incumbered, and that a private Act of Parliament had been obtained by the trustees of Lady Glengall enabling them to purchase, and that the object of his Lordship was to get the estate bought in by those trustees at a gross under value. Creditors representing incumbrances to over £40,000 acquiesced in the application, but the Court refused it ;

and the judgment of Dr. Longfield relating to the practice on the subject may be usefully considered. He said :—

“Our practice as to transferring the carriage of proceedings was altered at the expiration of about a year after the opening of the Commission. At first it was necessary that we should hear those motions very favourably, in order to prevent the practice of persons who had no great interest in estates hastening forward to present petitions, for the purpose of obtaining the carriage of the proceedings. But when a year had elapsed from the opening of the Court, we felt that no party could have cause to complain that he was anticipated in the presentation of a petition. Therefore, the party who now seeks to have the carriage of proceedings transferred to him, does not do enough in showing, that if the question of who should conduct the proceedings was perfectly open we would give the carriage to him. Unless we see that the party who has the carriage is acting, or is likely to act, improperly, we are not willing to take it from him. Now, we have no grounds for believing that Lord Glengall's solicitor will either carry on the proceedings improperly, or receive instructions to do so. On the contrary, we believe that he will conduct those proceedings with propriety. In estates of great magnitude, such as this, we have already taken the course of appointing a solicitor, in addition to the solicitor having the carriage, to watch the proceedings for the creditors. We give a solicitor so appointed the power of coming in on every motion, at the expense of the fund, for the purpose of giving his opinion, and of appearing by counsel, when the Commissioner in whose office the matter is thinks counsel necessary. We have done this in the case of the Earl of Kingston, and in that of Lord Belmore, also; and the expense of such a course is comparatively trifling. This is what we will do in this case likewise, as Lord Glengall, in the negotiations for the sale of the estate to Lady Glengall's trustees, may have an interest adverse to that of the creditors; and all parties will have an opportunity of protecting their interests,

without incurring any personal expense. I would observe, that although we are not disposed to take the carriage of the proceeding from a party who has merit, we are very much disposed to transfer the carriage when there is any misconduct on the part of the person who has the bringing of an estate to a sale."

In a subsequent case, *E. M. Sanders' Estate*, an application for the carriage of the proceedings was made, alleging no default, but simply on the ground that the applicant had a greater interest than the petitioner. The Court refused the motion, and intimated that they would in future refuse all applications of the same character, where there was no default, or where no extraordinary circumstances appeared; and, in reference to the practice, the Court observed that:—

E. M. Sanders' estate.

"The bringing forward of a motion to take the carriage now, was a different thing from what it had been at an early stage of the existence of the Commission. At first, before the business became very pressing, a petition was generally fiatd on the day it was presented; several petitions were, in many matters, presented; but, owing to the Commissioners being able to take up petitions so soon after they were filed, the most imperfect petition in a case might be that which had received a fiat. However, unfortunately, a petition could not now, perhaps, be taken up for three months after it was presented; and then all the subsequent petitions in the same matter were laid before the Commissioner, with the first one; so that he had thus a better opportunity of judging of the comparative merits of the several petitions. It might be observed, that this taking up of several petitions in the one matter, at the same time, made it appear, sometimes, that the Commissioners took petitions out of their order oftener than they really did. Formerly very little delay had been caused by the service of a notice to change the carriage; for the Court had been able to hear

such motions very shortly after they were put on the list; but the contrary being the case now—motions having to remain often two months on the list—very considerable delay arose where a notice to transfer the carriage was served. The party who had obtained the absolute order did not like to proceed on it after having received such a notice; and thus matters were left standing. It was this inconvenience that had made it necessary for the Court to intimate that, generally speaking, they would not take the carriage from a party whom they had no reason to distrust, even though he might not be the party who had the greatest interest in the estate. By adopting this rule they assimilated their practice on this point to that of the Court of Chancery; but even if the Commissioners were inclined to go into nice investigations of comparative interests, they really had not time to do so.”

**M'Mahon's
Estate.**

In a still more recent case (the estate of *John and Thomas M'Mahon*, February, 1852), an application was made for the carriage of the proceedings, and the Chief Commissioner, in giving judgment, remarked that—

“The course of practice which we have followed for a considerable time is quite opposed to this application. When our Court was first opened there was a great rush of small creditors, who presented petitions for the purpose of obtaining the management of the proceedings. Those parties to whom I allude had really no interest in the estate, regard being had to the amount of the incumbrances, and the value of the property, respectively. In Lord Portarlington's case, there was an attempt of that kind—where a party bought a judgment for something about £150, presented a petition, and insisted that he had a right to hold the carriage of the proceedings as against mortgagees, whose mortgage amounted to £400,000. It was at that time argued, that the party who came in first had a right to carry on the sale; and that if his solicitor were a respectable gentleman, we ought not to displace him, inasmuch as he acted rather for the Com-

missioners than for any particular party. But in that case we thought it right to take the carriage of the proceedings from the petitioner, it being very evident that the owners of the large mortgage were the parties really interested in the estate; and the proceedings have been conducted very efficiently by the solicitors of those mortgagees ever since. However, for more than a year and a-half, this has been the rule of the Court—that where we find a party conducting proceedings well, we will not remove him. Motions of this kind occupy a considerable time, and very much interfere with the discharge of our duties. The question is not, whether this attorney or the other shall have the carriage of the proceedings. Where we find that the case of the party having the carriage of the proceedings is a *bonâ fide* one, and that he has carried on these proceedings properly, we will not remove him on grounds such as those put forward on the present application. The petitioner here has not been very premature in presenting his petition; and the other party incurred expense in Chancery before he came here. Did we give encouragement to such motions as this, there would be no end of them; for after we had transferred the carriage from one party to another, a third might come in for the purpose of showing that he had a greater interest than either, and should, therefore, have the bringing of the estate to a sale. Under all the circumstances, we think this application must be refused.”

Where a property has paid the creditor having the carriage of the proceedings, and where the residue is more than sufficient to pay the remaining creditors, the Court will, on application, transfer the carriage of the proceedings to the owner.—*In re G. W. Lambert*, 3 I. Jur., 235.

It would serve no purpose to refer to the numerous other causes decided on this subject. The practice is now well settled, as stated in the judgments quoted, Application on ground of delay. Preliminary notice necessary.

and the recurrence of such applications should in future be comparatively rare, and then only on very special grounds. Where the application is founded on delay or default, it should be justified by the circumstances; and the Court have decided (though no General Rule has been published) that parties who have, or believe they have, cause to complain of delay, should serve a notice on the solicitor having the carriage of the proceedings, requiring him to state, within a reasonable time, to what stage the proceedings have arrived; and that, in case no satisfactory information is afforded, or erroneous information given, or in case the party failed to show that there had not been delay, then the opposite party may apply for the carriage of the proceedings, if so advised.

Applications to rescind, vary, or set aside order. Issue.

Motions to rescind or set aside order, and vary fiats (which are Court motions), are of frequent occurrence where, either by mistake or design, lands belonging to third parties are mixed up in petition. The course in such cases is, to move to discharge the order, so far as it relates to the land improperly included in it, and the order will be discharged with costs, if it appear that the petitioner was not justified in including it in his petition.

Rights of party in possession guarded.

The Commissioners have, in applications of this description, treated the rights of parties *in possession* with great care, and have decided that, when a party is found in possession, it rests with the petitioner to show his title to sell what was so possessed. The petitioner has no right to seek a sale of property in the possession of

another party, without being prepared clearly to show a title to it. No honest party in possession will be called on to show his title till a case is made out against him, and the Court will not aid parties presenting petitions for the purpose of discovery.—*In re The Marquis of Donegal*. But where an adverse claim is set up, a party relying on possession of part of the owner's estate for several years without paying rent, the Court will direct an ejectment to try the question, giving the owner the carriage of it, and putting the claimant under terms to waive all technical objections.—*In re Francis Drew*.

In case of adverse claim.

Ejectment directed giving owner carriage of proceedings.

In doubtful cases, as to the construction of a will, the Commissioners will send the matter to be investigated in a Court of Law, by directing a case to be prepared and submitted to a Court of Law, for its decision as to what estate the owner takes under a particular instrument;* and in such cases the petitioner will have the carriage of the proceedings.—*In re Purcell*.

Issue directed.

Where a party contracted to pay the purchase-money for property within a certain period after the purchase, and it was alleged that he never paid it, although he obtained the conveyance and entered into possession of the property, and an order for a sale was made, treating him as the owner: upon application to set aside the order, the Court held that it was a proper question for a Court of Equity, and they set aside the order for sale,

Validity of conveyance disputed; application to set aside order granted. Question for a Court of Equity.

* If necessary it will be referred to the Master to settle the case.

and dismissed the petition with costs.—*In re James M. Blake.*

Order set
aside where
owner has
not had a fair
opportunity
of showing
cause.

Where the owner of the property has not had a fair opportunity of showing cause, the order will be set aside to enable him to do so.—*In re Herbert.*

CHAPTER VII.

PROCEEDINGS AFTER ABSOLUTE ORDER OBTAINED.—COMMISSIONERS' DIRECTIONS.—NOTICE TO CLAIMANTS.—TITLE DEEDS.—PRACTICE AS TO LODGMENT OF.—PRELIMINARY NOTICES TO TENANTS.—TENANTS' LEASES AND AGREEMENTS.—STATEMENT OF FACTS.—SURVEY.

HAVING procured the absolute order for a sale, the first ^{Proceedings} step, which should be *at once* taken, will be to publish ^{after absolute order.} the notice to claimants; the General Rule requiring this notice is the 23rd, and is as follows:—

That when the absolute order for a sale shall be pronounced, advertisements shall be published in a Dublin newspaper, and in one or more local newspapers, and such other newspapers as the Commissioners shall direct, giving notice of such order, and calling upon all claimants of estates, interests, or incumbrances in or upon the premises ordered to be sold, to come forward and establish their several claims and demands.

In pursuance of this rule, the Commissioners have ^{Notice to claimants, 23rd Gen. Rule.} approved of a form of notice, which is as follows:—

SALE OF INCUMBERED ESTATES IN IRELAND.

Notice to Claimants and Incumbrancers.

In the Matter of the Estate of	}	The Commissioners having ordered a sale of the lands of [<i>state them</i>], all parties objecting to a sale of said lands, or having claims thereon, are hereby required to take notice of such order.
Owner.		
<i>Ex parte</i> Petitioner.		

Dated day of 1850.

Secretary.

Solicitor having the charge of the order for sale.	}

Upon producing the absolute order to the Secretary, he will sign this notice ; and the petitioner's solicitor should be prepared to state about the value of the property (which influences the directions that may be given for publishing the notice), and should also be prepared to say in what local papers it would be advisable to insert it.

Though at present there is no period in the course of the proceedings pointed out by the rules or practice, when the solicitor is required to show that he has complied with this direction by publishing this notice, it would still be advisable to preserve the papers in which the notice appears, so as to be *prepared* to prove the compliance with the directions, and also for the purpose of vouching the charges in reference to it in his costs.

Production
of deeds.

By the following General Rule of the Court (No. 11) the Commissioners are authorized to require all parties

to produce to, or lodge with, them all deeds and other papers in reference to the estate :—

That when an *absolute* order for a sale shall be pronounced, the Commissioners may, if they shall think it necessary, require the owner, and all other persons, to produce to, or lodge with, the Commissioners, on oath, all deeds, books, papers, documents, and writings in their possession, custody, or power respectively, relating to the premises ordered to be sold, and to the charges thereon, and to do all such other acts, and furnish such information within the authority of the Commissioners to direct, as may be necessary to enable the Commissioners to sell the premises to the best advantage.

In pursuance of this rule the Commissioners have issued a by-rule of the Court, dated 14th January, 1850, by which it will be seen that the petitioner's solicitor should, within three days after obtaining the absolute order, be prepared to proceed. The direction is :—

That the party having the carriage of the proceedings shall, *within three days* after obtaining the absolute order for sale, serve a notice upon the owner, or the person upon whom the service of the conditional order was substituted, the receiver over the property (if any), and on such parties as have entered appearances by their attorneys, and on such other persons as he may believe to possess the required information, calling upon them, within ten days from the service of such notice, to furnish such information, and to produce to the Commissioners such deeds, leases, counterparts of leases, maps, surveys, statement of title, and other documents relating to the lands to be sold, or to the charges thereon, as may be in their custody or power; and stating that if, in case of refusal, or declining so to do, and in consequence thereof, an application to the Commissioners therefore become necessary, such notice will be made use of, in order to fix the party so refusing or declining with the costs of such application.

Commissioners' directions for proceedings after absolute order.

In complying with this direction, and indeed for future reference, the solicitor for the petitioner should make a list of the parties who have entered appearances, and upon whom this and the future notices should be served. The following form of notice has been approved of, and printed copies can be had at the principal law stationers.

IN THE COURT OF THE COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN IRELAND.

Notice pursuant to the Directions of the Commissioners, of
14th January, 1850.

Form of notice to produce deeds, &c.

In the Matter of Estate of	}	You are hereby required, within
, in the		TEN DAYS from the service of this
County of		Notice upon you, in pursuance of the
Owner,		General Order of the Court, dated the
<i>Ex parte</i> , Petitioner.		14th January, 1850, to inform me,

in writing, whether there are any, and, if so, what deeds, leases, counterparts of leases, maps, surveys, rentals, statements of title, or other documents, in your custody or power, relating to the estates in the petition in this matter mentioned, which have been ordered to be sold, or to the charges thereon.

And you are further required, within the same period, to lodge all such documents in this Court, in pursuance of the said General Order.

And you are hereby apprised, that in case of refusal or neglect to comply with this notice by you, if you have in your custody or power any such documents, and that an application to the Commissioners may, in consequence thereof, become necessary, this Notice will be used to charge you with the costs of such application.

Dated this day of , 185

Solicitor for the Petitioner.

This notice should be served through the Notice Office, in the manner already described, and the solicitor for the petitioner should be prepared with a copy for the office, with the names and addresses of all the parties to be served with it, and a similar copy for use, which he should get stamped with office seal, and the services marked at foot, to prove them at any future occasion.

Mode of
service.

The owner and any other parties (not necessarily solicitors), who probably may have any papers connected with the estate, should be served.

Having transmitted this notice, the solicitor should procure a box to lodge in the office, in compliance with the following by-rule, dated 1st March, 1850 :—

Lodgment of
box for
deeds.

The Commissioners hereby direct, that no original deeds or documents shall be received by the General Clerk unless the solicitor for the petitioner, or the party having the carriage of the sale, shall have previously lodged in the office a tin box, with lock and key, and the title of the matter legibly printed thereon, for which he is at liberty to charge as costs; and the solicitor for such petitioner or party having the carriage of the sale shall be responsible in case any injury shall arise by reason of his neglecting so to do.

In addition to the title of the matter on the box the solicitor for the petitioner should have his name also printed on it, and the box should be lodged in the *Record Office*. It will be necessary to attach a parchment label to the key of the box, showing also the title of the matter, and solicitor's name; the size of the box will altogether depend upon what number of deeds and papers the petitioner expects may be lodged relating to the property.

Practice as
to lodgment
of deeds.

Parties lodging deeds or papers, in pursuance of the notice served upon them, must be prepared with two schedules of the deeds and papers to be lodged, one to be left with them, the other to get receipted by the officer with whom they are lodged.

The following by-rule points out the form of the schedule:—

Solicitors lodging deeds are to bring duplicate schedules with the various documents, numbered 1, 2, 3, &c., to correspond with the numbers marked on the back of each document.

FORM OF SCHEDULE.	
Parties' Names.	Date and Description.
No. 1.	
2.	

In the event of non-compliance with the notice served upon them by the owner or other party, and generally in reference to title-deeds and maps, &c., relating to the estate to be sold, the following are the further general directions of the Commissioners:—

Commissioners' general directions as to title-deeds.

On the order for sale being made, an order of course may be obtained, requiring the owner to lodge all documents relating to the title of the estate, and all leases and agreements, or counterparts. The owner will generally save expense to his estate by rendering any maps, surveys, or rentals, available for the purposes of the sale.

Where the title-deeds are in the possession of an incumbrancer, an order may be obtained in Chamber from the Master, on affidavit, to lodge the same; the Commissioners, however, do not generally re-

quire the deposit of *the instruments constituting the security*, as they may be produced on proving the incumbrance.

Any expense or injury occasioned to the estate by the unauthorized retention of documents, will be recouped out of the incumbrance.

Any party depositing deeds in the office may lodge the same, subject to his *lien* (if any); and in such case the lien, when established, will be treated as a charge on the proceeds of the estate, and will rank in point of interest and priority as a charge by the person conferring the lien, of the date when the lien accrued. The existence and amount of the lien must be established when the schedule of incumbrances is being made up; but the Commissioners will not regard any claims of lien, unless the deeds are lodged according to their order.

Deeds subject to lien.

Where a solicitor has in his possession abstracts of title, copies of deeds, rentals, maps, surveys, or other documents prepared by him, for which he has not been paid, he may make them available for the purpose of the sale, by lodging the same in the office, and giving notice thereof to the party having the carriage of the proceedings; and, so far as their production saves expense to the estate, he will be entitled to apply to the Commissioners for an order that he may be allowed the amount as costs in the matter, independent of any lien.

Abstracts of title, copies of deeds, rentals, maps, surveys, may be lodged by any party, and costs paid.

Such documents as may be obtained from the offices of any of the Masters in Chancery, or the Remembrancer of the Court of Exchequer, and which it may not be necessary to deliver to a purchaser, shall, without delay, be returned to the office from which they were obtained; and all other documents shall be delivered over on application to the parties entitled thereto. Upon this subject the following General Order has been made in the Court of Chancery:—

Deeds and papers lodged in Chancery.

Dated the 14th day of March, 1850.

The Right Honourable Maziere Brady, Lord High Chancellor of Ireland, by and with the advice and assistance of the Right Honourable Thomas Berry Cusack Smith, Master of the Rolls, doth hereby, in pursuance of an Act of Parliament passed in the fourth and fifth years of the reign of William the Fourth, entitled, “An Act for the

General Order of Court of Chancery on subject.

Amendment of the Proceedings and Practice of the High Court of Chancery in Ireland," and in pursuance of all other powers in him vested, order and direct in manner following, that is to say, That in any case in which the Commissioners for Sale of Incumbered Estates

Certificate of Commissioners requiring deeds. .
Master in Chancery may hand over deeds.

Practice.

in Ireland shall certify that they require, for the purpose of any matter depending in their Court, any deeds, leases, muniments of title, or other like documents, which are or may be lodged in the office of any of the Masters of this Court, the Master in whose office such deeds, leases, or muniments of title, or other documents, shall be so lodged, shall be at liberty, on the production of such certificate to him, to hand over all such deeds, leases, muniments, or documents, to such of the officers or clerks of the Commissioners as they shall appoint to receive the same; and in case the Master shall be of opinion that notice of such application to him should be given to any party or parties in any cause or matter depending in this Court, or otherwise, prior to such documents being so handed over, he shall state on the back of such certificate upon whom, in his opinion, such notice should be served, and whether personally or upon the solicitor for such party, or at his residence or otherwise; and any party objecting to the handing over such documents shall be at liberty to appear before the Master, and state the grounds of his objection to such application, and if the Master shall be of opinion that the objection of such party is well founded, he shall decline to hand over such documents without the special order of the Court; and in no case shall the Master hand over such documents without obtaining a receipt for the same, and the receipt to be given by the officer of the Commissioners for all such documents shall state that the same are so handed over to him in pursuance of this General Order; and all such applications for documents shall be heard and disposed of by the Master at the commencement of his sittings on each day, and before going into the general business of his office.

MAZIERE BRADY, C.
T. B. C. SMITH, M. R.

After the service of notice to lodge deeds, and with the least possible delay, the petitioner's solicitor should procure as correct a rental as possible, showing the tenants' names, yearly rent and rent-charge, quantity of land held by them respectively, and the nature of their tenure; but as it is very improbable that he will be able to procure such a correct rental as will contain all these requisites, with the accuracy required by the Commissioners, it will be necessary, preparatory to serving a further notice, which is called the "Final Notice to Tenants," under the 13th General Rule, and which will be afterwards given, to serve what is called the "Preliminary Notice," the service of which is directed by the following Rule of the Commissioners, also under the date of 14th January, 1850:—

Proceedings after service of notice to lodge deeds.

Preliminary notice to tenants.

In order to obviate the delay and expense of objections made by tenants served with notice, pursuant to the 18th General Rule, the party having the carriage of the proceedings shall, *in case he have not sufficient information* to enable him to make out a full and correct rental and schedule to the notice required to be served in pursuance of the 13th General Rule, serve a preliminary notice, to be directed to the tenants upon each townland respectively, according to the form annexed, or as near thereto as the circumstances shall allow:—

Commissioners' directions.

NOTICE.

IN THE COURT OF COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN IRELAND.

In the Matter of the Estate of	} An Absolute Order for Sale having been made by the Commissioners in this matter, of the lands of , and as it will be necessary that I should furnish the said Commis-
, Owner,	
<u>Ex parte</u> , Petitioner.	

104 *Preliminary Notice to Tenants.*

sioners with a correct rental of the lands and premises mentioned therein, the several tenants upon said lands are hereby required to furnish to me a statement of their respective tenancies, setting forth the lease or agreement (if any) under which they hold, the rent payable by each, and the quantity of land held by them respectively. Such statement to be furnished to me on or before the* day of . And notice is hereby given, that should the said tenants, or any of them, decline to furnish me with such information, I shall serve the usual notice, pursuant to the General Order of this Honourable Court, in which I shall describe the tenancy of such tenant so declining, as existing from year, or otherwise, according to the best of my information ; and in case such description be incorrect, and such tenant should come in to make objection thereto before said Commissioners, I shall make use of this notice for the purpose of disentiing such tenant to any costs of making such objection. Dated this day of

{ *Attorney for*
 having the Carriage of said Order.

To the several Tenants upon
the Townland of

Such notice to be served by posting the same on the usual places for posting notices under the Grand Jury Act, and by delivering copies thereof to the Protestant and Roman Catholic clergymen, if they shall be willing to accept the same; and also by serving copies thereof at the residences of the three principal tenants upon each townland.

It should be remarked that all tenants should not be served with this notice, and the Taxing Officer will only allow the costs of copies for three tenants on each townland, in strict compliance with the Commissioners' directions.

* Ten days from service of notice.

This notice has been found not to answer, and although the form has been varied by several solicitors giving, annexed to the notice, a printed schedule in blank, for the purpose of enabling the tenants to fill up the full particulars of the nature of their tenure, it has still failed in eliciting the required information, the answers generally given by tenants being so insufficient that solicitors, who had experience on the subject, have substituted different modes of getting at the required information.

Remarks on form.

The object of the Commissioners in promulgating so many directions, and giving forms to meet their requisites, has been to simplify, as much as possible, their course of proceeding, and point out to the solicitors the best way of obtaining the information required; if, however, the solicitor succeeds by any less expensive and shorter method there will be no objection, so as the object in view shall have been attained. It has been found less expensive and troublesome, and far more certain of success, and of greater service in preparing the rental afterwards (if not altogether indispensable), that the solicitor having the carriage of the sale should apply himself, *in the first instance*, to get all the original leases that may be forthcoming, or copies of them, and then seek, from the tenants, copies of any other leases or agreements they may claim, and which cannot be otherwise procured.

Necessity for procuring leases in first instance.

This will generally be effected through some one of the tenants, or the bailiff or receiver, if any, over the property, and the Commissioners will allow any reason-

Course suggested.

able expense incurred in procuring and paying for the copies of such leases or agreements as may be in existence, and cannot be otherwise procured.

It may be important to direct attention to the provisions of the Act, and also to the General Rules regulating the practice of the Court, and to the Commissioners' directions relating to leases and agreements, as one of the most difficult and troublesome proceedings, in bringing a property to a sale under the Act, will frequently be found to be obtaining information on this branch of the proceeding.

The Sections of the Act applicable to tenants' leases appear to be the 23rd, 27th, and 29th. The 23rd Section, so far as it relates to tenancies, provides:—

Provisions of
Act relating
to tenants'
leases.

That where a sale shall be made, the Commissioners shall, where and so far as they may deem necessary for the purposes of such sale, ascertain the tenancies of the occupying tenants, and of any lessees or under-lessees whose tenancies, leases, or under-leases affect the land or lease, or part thereof, to be sold, and may give such notices, and make or cause to be made such inquiries as they shall think necessary for ascertaining and *securing the rights of such tenants*, lessees, or under-lessees as aforesaid; and all occupying tenants, and all persons being or claiming to be lessees or under-lessees, shall, at such times and places as the Commissioners may by their notices require, produce all leases, under-leases, and agreements in writing under which such tenants or persons occupy or claim to hold, if such leases, under-leases, or agreements, or counterparts thereof, be in their possession or power, and where they occupy or claim to hold under leases, under-leases, or agreements in writing not in their possession or power, or under parol agreements or lettings, they shall deliver, at such times and places as aforesaid, particulars of the terms and conditions upon and subject to which they occupy or claim to hold; and the sale shall

be made subject to the tenancies, leases, or under-leases, and subject to which the owner or incumbrancer applying for a sale shall be owner or incumbrancer, and such other of the tenancies, leases, and under-leases as shall appear to the Commissioners to have been granted *bonâ fide* by the owner or person in possession or in receipt of the rents and profits, and subject to which it shall appear to the Commissioners the sale should be made, save such (if any) of such respective tenancies, leases, and under-leases as, with consent as herein-after mentioned, shall be included in such sale, and, where the Commissioners think fit, be made subject to any leases, under-leases, or tenancies, according to any general description or subject to any condition concerning any leases, under-leases, or tenancies, the nature of which shall not have been ascertained or shall be disputed.

The 27th Section, which prescribes the effect of the conveyance, provides that it shall be effectual to pass the fee "subject to the leases and tenancies therein referred to, and discharged from all other estates, rights, titles, &c. ; and by the 29th Section it is enacted—

That the Commissioners shall have power to order the delivery Right of purchaser to leases, sec. 29. to the purchaser, or as he shall direct, of all leases or counterparts of leases and agreements, and other evidences of the tenancies subject to which the sale shall be made, affecting the land or lease, or part thereof, sold.

It will be seen that very large discretionary powers Powers of Commissioners over tenants' interests. are conferred upon the Commissioners by these sections of the Act over the tenants on properties brought within its provisions. In order to give the purchaser a perfect rental, they can require the production of all leases or agreements, and if tenants neglect or refuse to produce them, or if, in the opinion of the Commissioners, any

lease or agreement is not *bonâ fide*, or is made contrary to leasing powers, the Commissioners can sell discharged of any such lease or agreement.

Where a tenant holds under a lease, but has neglected to claim the benefit of it, and has been regularly served with the Final Notice under the 13th General Order, and his tenancy has been described in the conveyance to the purchaser as from year to year, the lease is evicted, and both the tenant and purchaser are bound by the description in the conveyance.—*In re John James Bodkin*, 3 I. Jur., 101.

If the tenant suffer any damage owing to the operation of the conveyance, the Court, on his application, will award compensation ; for they then deal, not with the lands, but with the money in Court.—*Ib.*

This power with which the Commissioners are invested, with reference to tenants' leases, should be made known to tenants. Heretofore tenants, at least in the South or West of Ireland, where they are partial to the litigation of the Quarter Sessions Courts, found they could frequently defeat an ejectment, and hold over their land, no matter what arrears were due, if even at the last moment a lease, or any *writing* in the nature of a lease, agreement, or proposal, could be produced. It is, therefore, difficult to impress upon tenants the powers vested in the Commissioners to set aside leases or agreements, or, if they are withheld, to sell as if none such were in existence. Too much care cannot be taken to save the honest, though perhaps ignorant, tenant from being deprived of his lease ; for, if the conveyance to

the purchaser be once executed, without saving the right to the lease, there is an end of the tenant's interests, whatever they may be, under it, and, without any trial or appeal, he may have lost a valuable lease, and become a mere yearly tenant, liable to be turned out at the end of each year.

Considerable attention to the tenancies is not only necessary to protect the tenant's rights, but for the interests of all parties; as there is no more frequent cause of delay and dispute between vendors and purchasers than misdescriptions in rentals; and in this Court there have been already several applications on the subject, and some purchasers discharged, to the serious injury of the property, on the grounds of misdescription in rentals. These cases will be referred to in a subsequent chapter.

Importance
of clearly as-
certaining
tenants'
rights.

With the view of eliciting the requisite information from the tenants, the Preliminary Notice was designed; but, even if the tenant furnish the full information required by it, the solicitor having the carriage of the proceedings will be still in the dark until he actually sees the lease or a copy, and, if it be a lease for lives, until he discovers whether the lives are in being or not, and their respective ages and descriptions, and also whether there are any special covenants in the lease; until then he really has not information sufficient to prepare the "Final Notice," or a proper rental to be handed to a purchaser. The 20th General Rule provides :—

Purchaser
entitled to
leases.

That the duplicates or counterparts of leases, where they exist, and can be had, or other evidences of the tenancies subject to which the sale is made, shall be delivered to the purchaser, except where they relate to other lands, in which case copies shall be delivered to him.

It would, therefore, appear to be necessary, in the first instance, where the leases are not forthcoming, to procure, not only the information required by the Preliminary Notice, but a correct and compared copy of the lease for settling the Final Notice, and to hand to the purchaser.

It will also be seen, when the Commissioners' directions in reference to the preparation of the rental are referred to, that the rental should state what documents will be handed to the purchaser of each lot, such as head leases, counterparts of leases; and that, if they be not forthcoming, it should state what copies, or other secondary evidence, can be given in their place, and any special provisions in the leases which may affect the value of the lot; and that, upon applying to settle the rental, the solicitor should be prepared with copies or counterparts of the leases stated in it.

A circular to the following effect may be very usefully circulated amongst the tenants:—

INCUMBERED ESTATES COURT.

Notice to
tenants to
furnish
copies of
leases.

In the Matter of the Estate	} An order having been made by the
of A. B., Owner,	
C. D., Petitioner.	

Commissioners for the sale of the Estates of A. B., the several tenants thereon are apprised that it is necessary for the solicitor having the carriage of the sale to ascertain exactly the nature of the tenancies, so that the sale may be made subject to existing leases or agree-

ments for leases. With this view such of the said tenants as claim any lease or agreement are requested to furnish copies thereof to the undersigned, in order that they may be stated in the rental for sale, and the rights of the tenants secured; the expense of making such copies will be paid, upon the delivery thereof, and the production of the original lease or agreement for the purpose of comparing the copy; and the said tenants are hereby informed that, if they neglect to furnish such copies and produce the original within ten days, they will be treated as yearly tenants, and it will be necessary for such of them as may so neglect, to come in and prove the said leases, at their own expense, before the property is sold, or they will lose the benefit of such lease or agreement.

Dated

Solicitor.

The Commissioners have decided that they will allow the expense of making the copies of the leases to be furnished; the expense of the copy of any common lease will scarcely amount to 5s., and the solicitor can easily arrange with some party, either on the property or near it, or at the nearest town, to receive the copy and compare the original; and, upon doing so, if it be a lease for lives, the existence, description, and probable age of the lives can be at the same time discovered and marked in the fold or at foot of the lease or agreement, and will save a great deal of trouble afterwards, and enable a perfect rental to be prepared with little difficulty.

Expense of
copies of
lease, &c.

The following are the remarks of the Commissioners, contained in the further directions issued in March, 1850, in reference to this subject, and appear to be addressed more to the tenants than the solicitor.

Commissioners' further directions in reference to tenants' leases.

Under the 27th and 29th Sections, the land is to be conveyed and delivered to the purchaser, subject only to the leases and agreements expressed or referred to in the conveyance. The effect of this is, that the tenant must lose his lease, unless satisfactory evidence of its contents and existence be given before the sale. He has, however, several opportunities of making and establishing his claims. First, as soon as the Preliminary Notice is served, he ought to state his claim, and offer to permit the inspection of his lease, and to give a copy on being paid the expense of making it. This is the proper and prudent course for him to take, and if he follows it, the existence and validity of his lease will generally be admitted without any further trouble on his part, unless there appear some good grounds to impeach it; while, if he neglects to do so, he may endanger his lease, or be put to costs in establishing it, which he will not recover, as they will be considered as having been occasioned by his own neglect.

The tenants will also, in many cases, have an opportunity of establishing their claims to leases or agreements when called upon to produce their leases, &c., under the provisions of the 23rd Section of the Act; and finally, when the notice is circulated under the 13th General Rule, they will all have an opportunity of putting forward their claims. The tenant whose lease is not impeached, and who complies with all the orders of the Court, will be paid all his reasonable expenses.

Order on tenant to produce lease.

If tenants, however, still refuse to produce their leases or agreements, and if it become necessary, an order can be obtained directing their production, which the Commissioners are authorized to do by the Act, and in pursuance of the 21st General Rule, which provides—

That the Commissioners may require and compel all persons claiming to be tenants, to produce the leases or agreements, or other instruments under which they so claim, and to give copies thereof.

If any opposition by the tenants is anticipated, it would be desirable, at this stage of the proceedings, to get the order of the Master, requiring the production of the leases or agreements to the party whom the solicitor may select for the purpose; and this order will be got, as a matter of course, on application to the Master, upon an affidavit showing the necessity for it. The form of order is, "that the tenants do produce their leases (at a place to be fixed near the property) to the solicitor (or party named by him), and give compared copies thereof, on being paid the usual scrivenerly charges therefor, or in default that the lands be sold discharged of said leases."

It will be necessary to compare the copies with the original lease or agreement, not only for the purpose of having a correct copy, capable of being proved, but to prevent imposture, for it has been found that tenants have put forward claims to leases or agreements, the copies of which appear to be correct, but when the production of the original is enforced, the dates, or the term, or even the lives named, or the rent, have been altered.

Necessity for
comparing
leases.

Having obtained all the information that can be collected in reference to the *tenancies*, it will still be improbable that the quantity of land in each tenant's possession can be ascertained with sufficient accuracy without a survey of the estate; it will, therefore, be necessary to apply to the Master for an order for that purpose.

To obtain, if necessary, general directions as to the

Proceedings
to obtain
Commission-
ers' general
directions
regulated.

sale and the title to the estate and incumbrances, the Commissioners have, under the 24th General Rule, given further specific directions. The Rule is :—

That when the absolute order for a sale shall be pronounced, the Commissioners, or in case of a reference to one Commissioner, such one Commissioner, shall direct what further information shall be procured respecting the title of all parties to the premises, and to the incumbrances affecting the same, and what searches or further searches should be made in relation thereto, and such person as they or he shall direct shall forthwith proceed to make out a full title to the premises, including charges and incumbrances thereon, and shall prove and verify the same in such manner as the Commissioners, or such one Commissioner, shall direct; but the sale itself shall not be delayed by the proceedings under this and the preceding rule, unless the Commissioners shall see cause for deferring such sale.

Statement
of facts.

The mode of proceeding is pointed out by the general directions of 14th January, 1850 :—

Commis-
sioners' di-
rection,
January,
1850.

That at the expiration of the ten days (mentioned in the notice which has been given to all parties to produce all deeds, leases, and other documents relating to the estate), the party having the carriage of the proceedings shall, without unnecessary delay, prepare and lay before the Commissioners a general statement of facts, to be verified according to the best of his information and belief, detailing, so far as he may be enabled to do, the several denominations of the lands to be sold, with the acreable contents of each, and the poor-law electoral division in which they are respectively situate, the number of tenants thereon, distinguishing those who hold under leases, from those who hold as yearly tenants; also whether there be a Court Receiver over any, and what portion thereof; the person or persons who are in possession of the title-deeds, tenants' leases, and agreements, or counterparts thereof, rental, survey, or statement of title (if any), or other documents relating to the property, or to the charges thereon, and.

such other information as may enable the Commissioners to give the requisite directions for proceedings, preliminary to the posting for sale, pursuant to the 24th General Rule; such statement to be accompanied with the index to the Ordnance Survey of the lands to be sold. And thereupon the Commissioners will make such orders and direct such proceedings as they may consider necessary and advisable.

In connexion with the foregoing directions of the Commissioners, the following "further directions,"
Further directions,
March, 1850.
issued in March, 1850, should be referred to:—

Proceedings under an order are not to be suspended or delayed, except by leave of the Commissioners; and any application for delay should, if practicable, be made before serving the final notices upon the tenants. Such application should be made upon notice to the creditors, in such manner as the Commissioners shall direct.

As soon as the order for sale is made absolute, proper steps must be taken to ascertain the particulars of the land or lease to be sold, and of the title and incumbrances. These steps may be going on at the same time, as one need not interfere with the other.

The party proceeding must immediately serve what is called the Preliminary Notice on the tenants and others, calling for information as to leases and other documents. Where the owner is himself the petitioner and in possession, it is presumed that, except under special circumstances, it is not necessary to serve the preliminary notice on the tenants, as an owner should make himself acquainted with the particulars of his tenants' holdings before presenting his petition.

The party proceeding ought also to consider whether a survey or valuation of the lands is expedient; and if he considers it expedient he should, without delay, apply to the Commissioners for permission to have a survey or valuation made. As a survey can be obtained at an expense not exceeding 3d. an acre, it will generally be useful to have a survey made, unless a very recent one can be obtained from some of the parties, or unless the nature of the interest to be sold

renders a survey plainly unnecessary. The permission to make a survey is to be applied for on notice to all parties who have appeared in the matter; and the application should be founded on a short affidavit, showing the necessity or utility of the survey. The scale which it is desirable to adopt is the ordinary estate scale of sixteen inches to a mile, or one inch to twenty perches.

Remarks on
"further di-
rections."

These "directions" and "further directions" may be considered together; and first, as to the statement of facts required, it can embrace the particulars mentioned in the "further directions;" it must contain several matters which the solicitor can easily disclose.

1st. The names of the denominations of land directed to be sold, and the acreable contents of each; the Poor Law Electoral Divisions, and the number of tenants on each division.

If the instructions which have been given for the preparation of the schedules to the petition be complied with, all these particulars can be taken from it.

2nd. The statement should show "the tenants who hold under leases, and those who are yearly tenants."

The result of the Preliminary Notice, or the notice suggested instead of it, and also the inquiries upon the estate, ought to furnish this information.

3rd. "Whether there be a Court Receiver over any and what part of the estate." The petition should also contain this information.

4th. The person or persons in possession of the title-deeds, leases, survey (if any), statements of title (if any), and other documents relating to the estate, and the charges thereon.

This information will probably be obtained from the answers received from the notice to lodge the deeds, and other papers; but as the parties in possession of the deeds and papers may have neglected to lodge them as required by that notice, the solicitor should, during the ten days allowed for the purpose, make himself perfectly acquainted with the information required. If necessary, an order can be obtained as a matter of course from the Master, directing the owner or other party to lodge all deeds and papers on oath.* It will be necessary in Survey. particular to ascertain whether a survey has been recently made, and whether it is such as will show the actual quantity of land each tenant holds; and if no such survey can be found to be in existence, it should be so stated; and it should also appear what deeds or documents (if any) have been lodged (this will be ascertained by getting a copy of the schedule lodged with them); and in case no deeds have been lodged, the solicitor should show by the statement in whose possession they are, or are supposed to be.

The statement should also contain any *special circumstances* connected with the estate, and in reference to which the Commissioners' directions may be required for the guidance of the party having the carriage of the order. The index of the Ordnance Survey, which is mentioned as requisite, is what is suggested to be added to the schedule of the property annexed to the petition.

* An affidavit stating the required documents, and in whose possession, is necessary to obtain this order.

The statement should be engrossed and verified in the same way as Chancery statements of facts (but no stamp is required), and an attested copy for use made, as the original must be filed, and notice should be served on all parties of the filing of it, and of applying for directions upon it. The notice may be in the following form :—

CHAMBER MOTION.

Notice of
proceedings
on statement
of facts.

In the Matter of the Estate	} I beg to apprise you that I have this
of A. B., Owner.	
<u>Ex parte C. D., Petitioner.</u>	

day lodged a general statement of facts,
as required by the Commissioners' di-
rections of 14th January, 1850, and that I shall, on next,
apply to Mr. Commissioner for such directions and in-
structions as may be necessary and advisable thereon.

Dated

This notice should be served two clear days.

The proceeding by statements of facts, as pointed out by the preceding directions, is now almost obsolete, the directions, however, have been retained to preserve the record of the earlier course of practice of the Court.

The establishment of the office of the Master of the Court has transferred to him the duties of making all orders, and giving all necessary directions *in reference to the preparation of the rental*. Where, however, there are any questions requiring consideration involved in the *title* to the property, and the sale of it subject to any charges, or subject to any particular conditions *arising out of the title*, a statement of facts may still be necessary, and the proper course of proceeding to obtain the

Commissioners' directions on such matters; but, *unless some special circumstances require it*, the statement of facts is not necessary.

In consequence of the great delay which will be most Survey of property. probably experienced in getting the maps and surveys, and as the Final Notice on the tenants cannot be served, unless the exact quantity of land held by each tenant is ascertained, the course found to be most expeditious and advisable is, that the solicitor for the petitioner should, *immediately* after the absolute order is obtained, apply to the owner or his solicitor, or to the mortgagee or his solicitor, either personally or by letters, or to the receiver, if any, and also apply in every other quarter likely to be informed on the subject, to ascertain whether a recent survey has been made, and if so, whether it can be obtained, and whether it is such as will show each tenant's holding, and be otherwise suitable for the purposes of the sale.

It may be remarked that in very few instances will such a survey as will answer be obtained; even if made within the last two or three years, it will be found that the tenants have changed, the farms have been altered, or that other circumstances render it unsafe to depend on any survey not made specially for the purposes of the sale. Of course, if the property to be sold be merely leasehold, a survey will scarcely be necessary; or if the property be all in the owner's possession. In those cases the Ordnance maps and valuation will generally afford all the necessary information; but where there are many, or even a few, tenants, a survey will be found

to be almost indispensable. If there be a recent survey and map of the estate, it can be revised and amended to show the present state of the property, and an expense of one penny per acre will usually be sufficient to pay for such revision and amendments.

Having then ascertained whether there is any such survey, or that there is none in existence (and this can be easily ascertained within three or four days after the order is made absolute), an affidavit should be made to ground the application for liberty to procure the survey.

The affidavit can be to the following effect :—

Form of affidavit to ground motion for order for survey.

In the Matter of the Estates	} E. F., Solicitor for the Petitioner,
of A. B., Owner,	
C. D., Petitioner.	

having the carriage of the order for sale in this matter, maketh oath and saith, that he hath made diligent inquiries (of the owner's and mortgagee's solicitors, and of the receiver or agent over the estate, or other persons likely to afford information on the subject, as the case may be), for the purpose of ascertaining whether any survey of the said estate has been made, and which could be rendered available for the purpose of the sale; and deponent saith that he has been unable to discover whether any such survey is in existence (or has been informed that no survey was made, or that a survey which was made some years since is in the owner's or mortgagee's possession); and deponent saith, upon the said estates are a number of tenants, and that it will be necessary, in order to ascertain the quantities of land in each tenant's possession, to have a survey now made (or such survey revised and amended). Saith that the said estates contain, as deponent believes, about acres.

Upon an affidavit to this effect an order for a survey will be made, *as a matter of course*, by the Master, if there be no appearance entered; but if there be any

appearance a regular notice of motion must be given, which can be in the following form :—

CHAMBER MOTION.

In the Matter of the Estate of A. B., Owner, <u>Ex parte C. D., Petitioner.</u>	}	Take notice that I shall, on next, apply to the Master, in Cham- ber, for an order for liberty to pro- cure a farm survey of the estates to be sold in this matter, and shall use my affidavit this day filed in support of the application.	Notice of application for order for survey.
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Dated, &c.

This application should not be postponed at farthest beyond a week after the absolute order.

The party making the application for the survey should be prepared to hand in the name of a surveyor. With regard to the selection of a surveyor, that is a matter altogether in the discretion of the solicitor; and as the charge allowed by the Commissioners is fixed by the order directing the survey, there will be no necessity for entering into an agreement, unless perhaps either in very small or very large cases; the usual sum allowed is three-pence per statute acre, besides which the surveyor will be entitled to his travelling expenses to and from the estate.

In some cases it will be desirable to have a valuation made, for instance where the land has been unlet, or where any portion of the estate can be treated as building land, or villa residences held on leases which will shortly expire, in which cases a valuation to show the estimated increased value that may be expected will be desirable and useful, and the Master will usually authorize it if

applied for; the expense of a valuation survey will generally vary from six-pence to a shilling an acre; in property densely populated, where there may be numbers of residences, the trouble of valuing each holding will be considerable, and the charge made is sometimes as high as a shilling, which, however, should include everything.

In the matter of the *Earl of Portarlington's Estates* the Commissioners held that Griffith's Valuation and the Poor Law Valuation were not sufficiently accurate, or conducted upon the proper system for enabling purchasers to arrive at a fair value of a property. They, therefore, usually require every property to be valued before it is submitted to competition, and the valuation, whatever it may be, stated in the rental, with the name of the party by whom it has been made. It is unnecessary to have a valuation of head-rents.

Having procured the order for liberty to obtain the survey and valuation, and selected the surveyor, the solicitor should make it a part of his arrangement with him that he should furnish a return showing the land in each tenant's hands, within, at all events, one month, and unless the estate is very large this can be effected.

Copy of rentals to be furnished to surveyor.

The solicitor should furnish the surveyor with as correct a rental as can be got, accurately showing the denominations and tenants' names, and also with a letter to the receiver or agent over the estate, or some of the principal tenants, requesting that every assistance that may be necessary should be afforded to the surveyor, and in particular in recommending a steady and trust-

worthy mearnsman, thoroughly acquainted with the property, to point out the bounds of each farm, and give an accurate return of the tenants. The solicitor will be entitled to charge in his costs the expenses of the mearnsmen.

It may occur that instead of assistance the surveyors will be subjected to annoyance, and experience difficulty in being allowed to enter the property; but in such an event, upon an affidavit detailing the circumstances, the Commissioners will at once direct a conditional order for an attachment, or if called for by the facts an attachment against any person interfering with or preventing the surveyor from doing his duty.*

Where surveyor interfered with.

In the matter of the Estate of *Francis Drew*, an order was made by the Commissioner in the matter, that the owner, or some person to be named by writing under his hand, should attend on the property at a certain time to procure entrance for a surveyor and his assistants, and to point out the mearns and bounds. Obstruction was thrown in the way of the surveyor by the labourers on the estate, who would not allow the surveyor to enter, and an order for an attachment was applied for. Upon behalf of the owner it was denied that he personally had obstructed the surveyors, and it was insisted that the Court had no jurisdiction over the personal liberty and freedom of a landed proprietor, so

* It would, perhaps, be prudent for the solicitor to have a distinct understanding with the surveyor that the expenses of the survey are not to be paid until the proceeds of the sale are realized; otherwise the solicitor may be called upon to make very heavy advances, which, however, no respectable surveyor will require.

as to compel him to assist in the proceedings towards a sale of his estate. The Court, however, granted the order for an attachment, and directed the property to be sold upon the Poor Law Valuation, without a survey. —15th December, 1852.

Preliminary
notice of
sale.

In some cases, where the property to be sold is large, or peculiarly requires early notice of the intended sale, a *preliminary* notice of the sale may be authorized before the rental is settled, detailing the circumstances of the property, and announcing the probable time of the sale, and when the rentals will be ready. To justify the costs of a preliminary notice, permission for it should be obtained from the Master, and the parties interested should get notice of the application to have it allowed, as it involves a good deal of expense in advertising.

CHAPTER VIII.

STATEMENT OF TITLE.—FINAL NOTICE TO TENANTS UNDER
13TH GENERAL RULE.—TENANTS' OBJECTIONS.—HOW DIS-
POSED OF.—SETTING ASIDE LEASES OR AGREEMENTS.

A CONSIDERABLE interval must elapse before the solicitor is furnished with a copy of the surveyor's return, during which, in most cases, he can do nothing in reference to the sale further than inquiring after the tenants' leases, as suggested, and having the statement of title to the estate, and incumbrances (if not lodged in the first instance), made out from the documents brought into Court by the parties, and if the parties have neglected to bring in the deeds or other documents, it will be the solicitor's duty to proceed to enforce compliance with the orders to lodge them by applying for conditional orders for attachments.

Statement of
title.

It will generally be found that some person has a statement of title, which, if not sufficient, can be made available, so far as it goes, by some amendments; and it will be the business of the solicitor having the carriage of the order to apply for liberty to take the deeds and documents lodged, out of the Court.

Procuring
deeds which
have been
lodged in
Court.

This is a motion of course, of which no notice is required; and if the Commissioner makes an order that

Practice.

the deeds may be handed over, the solicitor may prepare the order, to be signed by the Commissioner, and, upon his signature and the solicitor's receipt, the deeds and documents mentioned in it will be handed to him by the Record Keeper, for the purpose of preparing or examining the statement of title or other papers lodged.

Examina-
tion of
documents
lodged.

Having procured the deeds and other papers, the statement of title, if not previously made out, should be drawn from them. If, however, a statement be lodged, it should be carefully examined and amended, so as to comply with the directions of the Commissioners, already given (page 48).

It may be here remarked, that the solicitor having the carriage of the proceedings will find it necessary to re-lodge the deeds, with all necessary documents referred to in the abstract of title, viz., the original deeds which are forthcoming, or compared copies, with an affidavit accounting for the absence of the originals, and attested copies of memorials of such as may not be forthcoming, but are registered. The time for re-lodging the deeds with the statement and other documents will be before it becomes necessary to apply to the Commissioners to fix the day for the sale.

Proceedings
after obtain-
ing survey-
or's return.

When the surveyor shall have furnished a return of the tenants' names, and quantities of land held by each, the solicitor shall proceed at once with the preparation of the final notice under the 13th General Rule, which is as follows:—

Final notice. That on the order for a sale being made absolute, a notice shall be circulated among the tenantry or persons residing on the property,

according to a printed form to be approved by the Commissioners, specifying the tenancies, leases, and agreements which are admitted, and calling upon all parties who have claims for other tenancies, leases, and agreements not specified; or who consider that the terms of their tenancies, leases, or agreements are incorrectly stated, to come forward, and apply for an amendment of the order in this behalf. But this rule shall not be construed as rendering it necessary to serve every tenant, or every person residing on the property or claiming to be interested therein, with such notice.

The form of the Final Notice settled by the Commissioners, and now used, is as follows:— Form of
Final Notice.

INCUMBERED ESTATES COURT.

Notice by the Commissioners for Sale of Incumbered Estates in Ireland.

TO ALL WHOM IT MAY CONCERN.

In the Matter of the Estate of A. B., in the County of Owner. <i>Ex parte</i> C. D., Petitioner.	}	The Commissioners for the Sale of Incumbered Estates in Ireland have ordered a sale (amongst others) of the lands of [<i>state lands</i>], situate in the barony of , and county of , the estate (as it is alleged) of , in the said county, Esq., subject to the leases, agreements for lease, and tenan- cies from year to year, set forth in the schedule hereto. If any per- son objects to the said sale, on the ground that he has any interest in the said premises, not derived under said leases, agreements, or tenancies, or any of them, or because his lease, or agreement, or tenancy is incorrectly stated in the said schedule, he must lodge his objection in writing with the Secretary to the Commissioners, on or before the day of , otherwise his interest will be barred and concluded by said sale.
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And such objection must be verified by affidavit entitled as above, and sworn, if out of Dublin, before one of the Masters Extraordi-

nary of the Court of Chancery, and transmitted under cover, sealed with the seal of the said Master Extraordinary, to the Secretary of the Commissioners, No. 14, Henrietta-street, Dublin, the postage being first paid.

Dated this day of , 185

Secretary.

[Seal.]

Solicitor,

having the carriage of said Order,

Dublin.

The form of schedule referred to in this notice should contain particulars of all tenants' leases, and tenancies from year to year of the said lands ordered to be sold—as follows :—

No.	Denominations.	Tenants' Names.	Rent Charges.	Gale Days.	Yearly Rent.	Quantity Statute Measure.	Date and Description of Instrument (if any) under which Tenant holds and the Tenure of each Tenant.

Too much care cannot be shown in preparing this notice; where there are a numerous tenantry, it may be somewhat troublesome.

Instructions
for prepara-
tion of final
notice.

The course suggested is, to take each townland by itself, giving to each a notice confined to the tenants upon that particular townland. Having filled up, in the draft schedule, the names of the townland and the tenants upon it—as shown by the surveyor's return—

the next step will be, to refer to the receiver's account, if there be a receiver; if not, to the rental furnished by the owner or mortgagee, or made out and annexed to the petition, and from these sources to supply the yearly rent, and gale-days, and tenures.

In some cases, there may be leases claimed, which, Impeaching leases. by reason of having been made at under-value, or contrary to leasing powers, or by collusion between the owner and tenants, or upon other grounds, it will be necessary to impeach. The Master should be apprised of the special facts which would justify that course, and permission may be given, in such a case, to impeach the lease.

The description of the tenures, leases, or agreements, Forms of description of tenancies. claimed, and their contents, should be given in the 7th column in the schedule to the Final Notice, in this form :—

“ Lease dated 1st May, 1820, for 61 years, from the day of .”

Or “ Lease dated 1st May, 1820, for three lives, one of whom, viz., , is in being, aged about .”

Or, “ Tenant from year to year; tenancy determinable every 1st May or 1st November” (as the case may be).

Or “ Tenant under Court of Chancery; lease, *pendente lite*, terminates on sale.”

Descriptions of the tenant's tenure suggested by these forms will meet most cases.

It will be necessary then to refer to the survey and insert the quantity of land stated to be held by the particular tenant in the proper column; this will require Where tenant holds land partly by lease and part as yearly tenant.

much care, as frequent mistakes arise by reason of a tenant holding some land *under a lease*, and adjoining land *as yearly tenant*. The division of the estate into townlands will render a remark necessary, showing that the tenant holds different denominations under the same lease, or pays a bulk rent for portions of different townlands. Where, in such cases, it is found expedient to sell in separate lots, the consent of the tenant should be had to the proposed apportionment of his rent, or a notice served on him of the intended apportionment, to bind him by it.

Where variances occur between survey and land in lease.

Serious variances between the actual quantity of the land supposed to be held by the tenant, and appearing on the surveyor's return, should be inquired into, as there have been many instances of the surveyors having been designedly misled. However, with a little care this must be discovered. The area of each townland is ascertained beyond a doubt by the Ordnance Survey; and, by keeping each townland distinct the solicitor, with the assistance of the surveyor's return, should be able to see that every acre in the townland is properly allotted, and that there is no deficiency or excess in the ascertained quantity. However, where any doubt arises, the surveyor and the tenant should be again referred to, before the notice is finally settled. Where the tenant to the estate has under-tenants, their names should not appear in the surveyor's return, which should merely show the tenants paying the rent to the owner or receiver: much confusion often arises by the surveyor returning the names of under-tenants. If the

Under-tenants to tenant should not appear.

tenant holds by a lease or agreement, the amount of the rent-charge to which he is liable should be ascertained and inserted in the proper column of the schedule, and the blanks will then be found to be filled.

It is not absolutely necessary to state in the Final Notice, in describing the tenure, who are the surviving lives in a lease, or what the probable age; it is merely sufficient to show that the lease is in existence; but it would be desirable to find out and state the names and description of the lives and their probable ages, as it will give the tenant an opportunity of correcting any mistake on the subject, and the information will be necessary in the rental.

Surviving
lives in lease.

From the importance of the Final Notice, and as the rental *must be prepared from it*, a copy of the schedule part should be sent to the receiver, owner, or other person on or adjoining the estate, to examine, as much trouble will be saved in subsequent stages by having this notice thoroughly accurate. The solicitor is allowed a fee of 4s. for each tenant in the Final Notice, provided that the description is accurate, and corresponds with the rental subsequently to be made out from it. This fee is intended to provide for the difficulty and trouble in the preparation of the notice.

Copy of schedule to final notices should be sent to owner or receiver to be revised.

Having prepared a copy of the Final Notice for each townland on the estate, *duplicate copies* will be required to be lodged with the Secretary, and he or the Assistant Secretary will sign each notice and schedule, on the production of the absolute order, directing the sale of the lands; and where any variance arises between the

Duplicate copy of final notice required to be lodged.

lands named in the absolute order and the final notice; the *alias*, or different name of the townland, should appear.

According to a recent by-rule of 23rd June, 1852, the solicitor should produce (with the final notice) to the Secretary, the forms of requisitions to the Paymaster of Civil Services, in relation to Government charges. These forms will be obtained at the law-stationers. Four copies will be required, properly filled up.

Period allowed tenant to object to final notice.

The period allowed to the tenant to object to the notice, if his lease or tenure be incorrectly stated, is one month.

Service of final notice.

Having procured the notices to be signed, and lodged the duplicates, no time should be lost in serving a copy on each tenant; if the number exceed twenty on a townland, the course usually adopted is, to get the final notice and schedules printed; but as there are printed forms of the notice, and as, in making the copy for service, it will be only necessary to serve each tenant with *so much* of the schedule as relates to his *own holding*, it will be less expensive to make the copies. The owner should be served with a full copy of the notice; if a minor, his guardian; and it would be also prudent to send a copy to the receiver, if any, over the property.

The Final Notice must be served on *all occupiers* on the property, whether *tenants* or not, save where the tenant holds under a lease for lives renewable for ever, fee-farm, or for a long term of years, in which cases it

will be sufficient to serve the immediate tenant, and two or three of his principal under-tenants.

Where the person served is an under-tenant, the notice served on him should be a copy of that served on the tenant under whom he may derive, so as to enable him to state any objection to the description of the tenancy under which he may claim title, and in order to secure his rights.

The expense of the service of this notice should be covered, except in special cases, by a charge of one shilling for each tenant; a schedule of the tenants should be sent, together with the original notices, to the person who is to serve the notices, for the purpose of marking in the schedule how the services were effected.

Expense of service.

The following are "further directions" issued in March, 1850, in reference to the Final Notice:—

Commissioners' directions as to final notice, March, 1850.

The notice under the 13th General Rule ought to be circulated among the tenantry generally, *within six weeks after the order for sale* has been made absolute: a longer delay, except under special circumstances, is considered by the Commissioners as *prima facie* proof of want of due diligence. The necessity of serving this notice is peremptory in every case. Parties often fall into the mistake of supposing that this service may be dispensed with, because (they say) they know there are no leases, or they know *all the leases which exist*, or require no further information. But the 13th General Rule requires the circulation of this notice, not for the purpose of procuring that information which the notice presumes to have been already obtained, but in order that the tenantry and persons in possession of the property should have an opportunity of setting up *any claims* which they may have to *further interests* in the land beyond those

specified in the notice, and that in case no such claims are made, the Commissioners may decide judicially that there are no such further interests. This notice must be framed with great accuracy, as any error may put a tenant to the expense of establishing a claim to a tenancy different from that specified in the notice, an expense which must be repaid to him out of the estate, or by the petitioner, unless the Commissioners shall be of opinion that the tenant himself was in some default. When a tenant holds without lease from year to year, the notice must state, not only the rent and gale days, but also the period of the year when his tenancy expires; and the notice should describe the several farms in such manner as to show what lands are held by each tenant.

These directions have been, in part, practically rescinded, and are, to a certain extent, obsolete; the course now followed and approved of by the Master, is to defer the service of the final notice until the survey (where one has been directed) has been returned by the surveyor, and until it is ascertained that the Commissioner is likely, within a reasonable time, to read the Abstract of Title.

The rental cannot be settled by the Master until an order is obtained from the Commissioner referring it for settlement; the Commissioner will not usually give this order until he has read and approved of the Abstract of Title, and directed the searches, so that if the final notice were now served in an early stage of the proceedings, a considerable interval might elapse before the order to settle the rental could be obtained, and many changes would likely occur in the tenancies, which might render new notices necessary, on affidavits specifying the particulars of such changes.

It will be necessary to have an affidavit verifying the service of the final notice, as it will be required at a future stage of the proceedings; and the affidavit should contain a statement that, to the best of the knowledge of the party making it, there are no other tenants or occupiers upon the estate unless the persons so served. This will be, to some extent, a guarantee against any error in the surveyor's return, and in the rental.

The following form of affidavit has been found to answer :—

In the Matter of the Estates
of A. B., Owner,
Ex parte C. D., Petitioner.

E. F. maketh oath, and saith that he served the original notice in this matter (pursuant to the 13th General Rule of the Court), on which he has endorsed his name at the time of swearing this affidavit, on the several tenants mentioned in said original notice, together with such portions of the schedule annexed to the said original notice as relate to each of the said tenants respectively, by delivering true copies of the said original notice and said portions of said schedule respectively, to the said several tenants mentioned therein, or to the persons mentioned in the schedule hereto annexed in the manner and at the time therein specified, and deponent saith, he is not aware nor does he know of any other persons, except those named in said notices and so served, who are or who claim to be tenants to or occupiers of any portion of the lands named in said notice.

Sworn, &c.

SCHEDULE TO WHICH THE FOREGOING AFFIDAVIT REFERS.

Denominations (as in Notice).	Tenants' Names (as in Notice).	How, when, and where served.
	A. B. C. D.	Personally, 1st May, 1850, on the lands. His wife, servant, son, daughter, &c., as the case may be, on 2nd May, 1850, in house.

Where the tenants hold under leases of lives renewable for ever, or for a long term of years, that portion of the affidavit negating that there are any "occupiers" may be omitted.

It is *particularly desirable*, and the Master expects, that the service of the different tenants in the affidavit should follow in the same *order* as the tenants' names in the notices.

Upon the original notice should be endorsed, "*Original notice referred to in affidavit of E. F., this day sworn before me.—G. H., Master Extraordinary.*" And should be also signed by the party verifying the services, in presence of the Master Extraordinary.

Objections
by tenants.

The following is the General Rule (No. 14) which regulates the practice as to objections by tenants :—

That if any person shall claim to be entitled to any lease or agreement other than those which are admitted, he shall lodge in the office the particulars of such claim, accompanied by an affidavit that he believes the same to be just and true, and (if he does not appear by attorney), stating the address to which notices and orders may be served on him; and the Commissioners shall thereupon make an order, either allowing his claim in the whole or in part, or calling upon him to sustain it by sufficient evidence, or such other order as may meet the merits of the case.

If, therefore, the final notice which shall have been, in the manner pointed out, prepared and served, treat a person as yearly tenant who claims a lease or agreement or other interest in any of the lands, any right of passage, easement, right of turbary, &c., it will become necessary for the tenant making the claim to lodge an

objection to the final notice *within the time named in it*.
The objection or claim may be in the following form:—

TENANT'S OBJECTION.

<p>In the Matter of the Estate of A. B., Owner, <i>Ex parte</i> C. D., Petitioner.</p>	}	<p>C. D. of in the county of tenant to that part of the lands of ordered to be sold in this matter,</p>	<p>Form of objection.</p>
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maketh oath and saith, that by lease (*or* agreement) bearing dates and executed on or about the day of , 18 , by A. B. the owner (*or* his father *or* grandfather, *or* other predecessor, as the case may be), duly demised (*or* agreed to demise) to E. F. that part of the said lands (describe as in lease *or* agreement claimed) to the said E. F., his heirs, &c., for the term of 61 years (*or* for the lives of and , as in lease *or* agreement), at the yearly rent of £ , and saith that, of the lives named in said lease, A. B. is still in being, and deponent claims the benefit of said lease (*or* agreement), and objects to the sale of said lands, unless subject to deponent's rights in respect of said lease (*or* agreement), and deponent saith that the claim so made by deponent is, as deponent believes, *just and true*.

Sworn, &c.

If, as frequently may be the case, the tenant has lost his lease, the best evidence of it should be given; a correct copy acted on for some time, an attested copy of the memorial, if registered, entries in account books, or other clear secondary evidence, which should be *fully* verified by this affidavit.

If lease lost, secondary evidence may be given.

If the claim be made by a tenant (not through a solicitor), he should sign his name at foot of the affidavit, and give an address to which a notice may be served on him; and make the affidavit before any Master Extraordinary, who will enclose it in a sealed envelope,

If objection filed *or* claim made by tenant, not through a solicitor.

addressed to the Secretary or Assistant-Secretary of the Commissioners, and the tenant will get notice when he should produce his lease, or of other proceedings in reference to it.

Proceedings] after expiration of time for objecting limited by notice.

Investigation of objections.

At the expiration of the time limited in the final notice for filing objections, the petitioner's solicitor should take out copies of any objections so filed by the tenants, and should at once proceed to investigate them. This can be done by transmitting the particulars of the objection to the receiver, owner, or other party, through whom he previously sought to discover the leases, or tenancies; or through the bailiff who served the notices; or by direct communication, by letter, with the tenant, requiring him to furnish the copy-lease so claimed, and produce the original.

Having collected all the information he can in relation to the tenants' objections, if there be any filed; or, if there be none filed, having obtained a certificate to that effect, the solicitor having the carriage of the proceedings can do nothing further towards the sale until he procures the Commissioners' order, referring the rental to the Master for settlement.

This order will be procured on application to the Commissioners' Examiner; but not, however, until the abstract of title has been read and approved of, and the searches directed.

The order referring the rental having been obtained, and the direction for the searches being at the same time given, the *first* step the solicitor should take, and before entering upon the tenant's objections or the settlement

of the rental, should be to bespeak the searches, about which no difficulty should be experienced; the observations on the subject in a subsequent chapter (XIV.) may be here referred to, and the steps there pointed out taken, while the other necessary proceedings towards the sale are progressing.

Having bespoken the searches, attention should be then directed to the disposal of the tenants' objections, and the settlement of the rental. Where the objections are not likely to involve any serious alterations in the rental, the draft of it may be prepared before the discussion of the objections, and the objections heard and disposed of upon the settlement of the draft rental.

In cases, however, where the draft rental could not be conveniently prepared until the objections to the final notice are determined, they can be brought forward by notice to the tenants, which may be as follows:—

Entitle in the Matter.	}	Take notice that I shall, on	Notice of proceedings.
		next, apply to the Master, to examine into and dispose of the claim	
made by		to a lease (<i>or</i> agreement) of part of the lands	
of		, and you are required to produce the original lease	
		so claimed, or give evidence of its contents, or I shall apply to have	
		the said claim disallowed.	
Dated, &c.			

In case there are a number of objections by tenants on the estate, all parties should receive notice of the application, and they should be disposed of at the same time.

Where there are a number of objections, all parties should get notice.

Where the tenant has filed his objection by a solicitor, service of the notice on the solicitor, through the Notice Office, will be sufficient. In cases in which, from the condition in life of the tenant, it is not probable that a notice *through the Office* would reach him, it will be necessary to have the notice served, and to have an affidavit of such service; this notice should specify *the day* on which the objection would be heard, not earlier than *one week* from the time of service.

Questions
arising upon
leases.

Serious questions may arise as to the construction of leasing powers—the effect of family settlements, of fines and recoveries; in fact, where leases are impeached, the solicitor must be prepared very clearly to establish the grounds of objection to them.

In the matter of the Estates of *Walter Blake* there were a number of tenants' objections, which were under discussion before the full Court upon many occasions, in an early stage of the proceedings of the Commission, and some important decisions were made.

Leases made
contrary to
leasing powers.
Questions
as to validity
of deed decided.

It appeared that by a post-nuptial settlement, entered into in the year 1799, the estates ordered to be sold were put in strict settlement to W. Blake, the settlor for life, remainder to Xaverius Blake, his son, for life, with other remainders over. The *usual* leasing power was reserved to the successive tenants for life; and it appeared that subsequent to the deed the said Walter and Xaverius Blake executed several leases, most of which were impeached by the creditors as having been made contrary to the leasing powers reserved in the deed of 1799. Upon the tenants' part it was insisted that the deed being

post-nuptial was voluntary. It appeared, however, that Mary Blake, the wife of Walter Blake the settlor, had, *in consideration* of the settlement proposed to be made for *her* and her *issue* by the deed of 1799, agreed to bar her right to dower (which in effect she did); and it was relied upon, by the parties deriving under that deed, that it was therefore a deed for *value*, and was a valid and effectual settlement of the estate, and that all leases made contrary to the leasing powers contained in it were invalid. After much argument on the question, upon several occasions, an order was made declaring the deed valid, and *setting aside all leases* made contrary to it, and several tenants, who had for many years enjoyed leases at pepper-corn and other nominal rents, were consequently deprived of the benefit of them; and as to other tenants who, for a number of years, had, in pursuance of covenants in their leases, retained their rents as a set-off against judgment debts due by the said Walter Blake, but incurred subsequent to the settlement of 1799, and therefore only affecting his life estate, the leases were declared to be valid, but the covenants invalid; and as to other tenants, against whom it was alleged that they had procured leases at a great under-value, the Commissioners declined to decide the point, but gave the mortgagee, who questioned the lease, the option of trying an issue with the tenant, to determine whether, *at the date of the lease*, the *then* full value of the lands demised was reserved in the lease. The mortgagee applied to change the venue, alleging that there would be great difficulty in obtaining

Leases set aside as contrary to leasing power.

Covenants in leases declared void.

Leases at under-value,

Issue directed.

Venue.

an impartial jury in the same county in which the property was situate, from the number of leases which were impeached, and the personal influence of the several tenants in the country; but the Court declined to put tenants, who had for years enjoyed their lands, to *unnecessary* inconvenience in maintaining their leases, in an issue to be tried out of the county in which the lands were situate. The result was, that none of the issues were prosecuted; but eventually the following very important order was made in that case, to enable the parties to treat with the several tenants on the estates for new leases on extended terms:—

Order for liberty to treat with tenants.

Ordered (*inter alia*), that A. and B. (solicitors for parties) be at liberty to *treat* with the tenants of the lands ordered to be sold, for the purpose of enabling the said tenants to take out *new* or *extended* leases, *at fair rents*, and for *uniform terms*; and for this purpose, that one of them (A. and B.) be at liberty to proceed to the lands to treat *personally* with the said tenants: the costs of such proceeding not to exceed £20.—*Miscellaneous Order Book*, 5th July, 1850.

Leases executed after incumbrance.

In a subsequent case (in the matter of the Estate of *J. Crosbie*), it was sought to set aside a tenant's lease, by selling the estate discharged of it, on the ground that it was executed after an annuity deed. In that case Mr. Commissioner Longfield gave an important judgment, laying down the practice of the Court with respect to disputed leases.

Practice of the Court as to setting aside leases. Commissioners' remarks.

He said "that the law of the land allowed a mortgagee to bring an ejectment to turn the tenant out, in cases where a lease has been illegally made against his

interest ; but this was generally a very imprudent thing for the mortgagee to do ; it was better for him to get the rent than suffer himself to be exposed to expensive costs, where the result might be his turning out a solvent tenant, getting in an insolvent one. Therefore, the well-disposed tenant was protected by the difficulty of carrying out the law in this respect. Then, as to a Court of Equity, a lease might be made puisne to a party's incumbrance, and at such a value, as to render the recovery of his incumbrance a matter of doubt : but it was a rare thing to make an agricultural tenant a party to a suit in a bill filed, in order to impeach his lease. Such a course was adopted sometimes when leases were made between father and son : but it was very seldom, indeed, that an honest tenant was made a party to an Equity suit, to break his lease. Here, also, the inconvenience protected the tenant. The Court for the Sale of Incumbered Estates had not been established to relieve all the embarrassments of all Chancery suits, but only those interminable suits which had been in the Court of Chancery for a length of time. The Court of the Commissioners would become a great nuisance if they were to exercise the summary powers with which the Act had invested them for the purpose of breaking leases, merely because a Court of Law or Equity would break them if the incumbrancer took the necessary steps. What the Commissioners would do, therefore, was—they would give the party applying an opportunity of impeaching the lease, if he wished to institute proceedings for that purpose in a Court of Equity.

The Commissioners did not deny their power, but justice required that the party whose lease it was sought to impeach should be brought fairly before the Court of Equity, and that the incumbrancer should not be allowed, by a summary proceeding, and at the cost of a few shillings, to upset his lease. As they had a good many cases like the present before them, it was very important that their practice in this respect should be known. It was very important to have it known that *honest tenants' leases* the Commissioners would not break. The order, therefore, was, that the sale should be postponed, if the incumbrancer wished to file a bill to impeach the lease. The applicant would have his costs of this motion, as it was the first of the kind brought forward; but it was understood that in future any incumbrancer coming forward with a motion to break a tenant's lease would do so at his own peril, if the lease were a *bonâ fide* one. No costs to be allowed to the tenant, the strict law being against him."

Leases made
bonâ fide
will not be
set aside.

Since the decisions in these cases, a great variety of cases in relation to leasing powers, leases at under-value, and collusive leases, have arisen, and the Commissioners have, and (since his appointment) the Master has, in most instances, summarily dealt with them.

It would be beyond the scope of this book to review those cases, or to refer to them further than where they involve questions as to the practice of the Court.

A lease, alleged to be at an under-value, made to commence *in futuro*, will not be upheld by the Commissioners, but, they will allow a wide latitude to a party

permitted by his creditor to continue in possession of his property, and will not scrutinize too closely any *bonâ fide* agricultural leases he may make.—*In re Lord Aldborough*, 3 I. Jur., 165.

Leases made clearly at an under-value, to the prejudice of the creditors, will be set aside; but it will be open to the tenant, if he thinks fit, to make a case for compensation.—*In re Lord Mountcashel*.

Where the petitioner was aware that a large fine was paid upon the execution of a lease, which fine had been in fact received by the petitioner, who was a mortgagee, yet he suppressed the fact in the rental, and became himself the purchaser at the sale; it was held on behalf of a puisne incumbrancer that the sale should be set aside, and leave was given to the applicant to impeach the lease, and the carriage of the proceedings was also given to him, so far as such proceedings were concerned.—*In re Assignee of T. P. Roberts*, 3 Ir. Jur., 142.

Where a lease, manifestly under value, was made, which the Court felt bound to sell discharged of, they sold subject to the sub-lease, directing the tenant to attorn.—*In re H. Darcy*, 3 I. Jur., 404.

Under a power reserved in a mortgage to make leases for any time, provided the rents as set forth in a schedule were not thereby diminished, the mortgagor granted a lease for a term of 300 years, and soon afterwards granted a second lease of the premises comprised in the former lease, together with other portions of the mortgaged property, and reserving a rent in pursuance

of the powers contained in the deed of mortgage. Held (reversing the decision of the Commissioners), that the second lease, being strictly within the terms of the power, was valid although concurrent.—*In re Wrison*, 4 I. Jur., 73.—J. C. P. C.

Where, however, this Court had sold discharged of a lease, although the instrument had been lodged in the proper office, and there was no evidence that any of the lives for which it had been granted were expired, the Master of the Rolls refused, on the application of the purchaser, to discharge a Receiver, who had been appointed over the tenant's interest, leaving him to pursue his remedy at law, and intimating that there was nothing in the Act to displace the jurisdiction of the Court of Chancery in cases of express notice, or of fraud.—*Locke v. Ashe*, 4 I. Jur., 180.

CHAPTER IX.

PREPARATION OF RENTAL AND POSTING.—COMMISSIONERS' DIRECTIONS.—DIVISION OF LOTS.—DOCUMENTS TO BE PRODUCED ON SETTLING DRAFT RENTAL, AND POSTING.—SALE OF LEASES.—ADVERTISING SALE.—SALE OUT OF DUBLIN.—DISTRIBUTION OF RENTALS.

HAVING disposed of the objections filed by the tenants, by getting the decision of the Master upon each case, or if there be no objections filed, the next proceeding will be to procure a certificate to that effect, which will be got in the Registrar's office, certifying that there are no objections filed, or that there are only certain objections, which will be specified in the certificate ; and upon each of which a decision should have been procured.

Considerable care will be required in preparing the rental ; to make the draft, ruled paper with printed headings, or with the proper headings written, should be first arranged ; there should be generally nine columns, showing as follows :—

1	2	3	4	5	6	7	8	9	Form of rental.
Deno- mina- tions.	Te- nants' Names.	Rent- Charge.	Quan- tity of Land in Irish Mea- sure.	Quan- tity of Land, Statute Mea- sure.	Yearly Rent.	Gale Days.	Tenure.	Obser- vations.	

To fill up these columns accurately, but little difficulty ought to be experienced, if the previous instructions as to the preparation of the final notice had been carefully attended to.

Mode of settling.

The first consideration will be to select the denomination or townland with which to commence, and in making the selection it would be well to refer to the map which the surveyor will have furnished, and keep the townlands that naturally adjoin each other together, commencing at one particular side of the map and arranging the townlands from that point, in the rental, consecutively; this will render the division of the estate into lots easy at any time.

Reference to the numbers of the holdings on the map will be most useful to the solicitor when preparing the draft rental, but they should not be annexed to the rental itself, as they may lead to objections by the purchaser, and the Commissioners do not permit them to appear on the schedule of property to be annexed to the conveyance.

Having selected the denominations with which to open the rental, the tenants' names upon it should be transcribed, in the *exact order* in which they appear in the final notices, as the most convenient course, and one which very much expedites the settlement of the rental.

In case the final notice gives the acreage in *Statute* measure, it may be desirable to have the *Irish* plantation measure also given, which the surveyor should furnish.

In the draft rental, as in the final notice, the town-

lands should be kept distinct, and a fair space should be allowed between each to enable a perfect description to be inserted in the column for observations, and, if necessary, to make separate lots, and show the value of each denomination.

The column for *observations* should show the situation in reference to the nearest town, and the general character of the land comprised in the particular townland or denomination, whether pasture, tillage land, or mixed pasture and tillage; and if intersected or meared by a public or other road or river, with mill streams, or water power, or having any valuable or ornamental plantations, or farm or other houses, and any other circumstance that might tend to increase the value, or that the purchaser ought to be apprised of, should be concisely and accurately stated. The Ordnance valuation and the maps, with the assistance of the surveyor, will furnish all information on these points. At the foot of each townland, in the column for observations, a table in the following form will be very desirable for immediate reference :—

TOWNLAND, SURVEYS, AND VALUATIONS.

Denomination.	Quantity of Land per Ordnance Valuation.	Ordnance Valuation.	Poor Law Valuation.	Index to townland, surveys, and valuations.

At the foot of the table should be stated :—

“ This townland is subject to tithe-rent charge, £
Do. do. quit-rent, . . £ ”

Where the Ordnance or Griffith's valuation is given, and in most cases it should be stated, the following General Order of 13th June, 1853, should be attended to :—

It is ordered that previously to the settlement of any rental of property the solicitor having the carriage shall, if practicable, obtain the Ordnance or Griffith's valuation thereof at the General Valuation Office, and shall be at liberty to pay the charges for obtaining the same according to the scale of fees settled by Mr. Griffith, and shall be allowed the same in his costs; and that the Master shall not permit the Ordnance valuation to be stated in any rental until a certificate of such valuation shall be produced to him signed by the authorized Clerk of the Ordnance Valuation Office.

Power of
Commission-
ers in the
conduct of
the sale.

Having placed each denomination, with a fair space between them, in the draft rental, in the manner suggested, the next matter worthy of attention should be the consideration as to whether it will be more desirable to sell the property *entire* or in *lots*, by public or private sale, in Dublin or elsewhere. It will be seen by the 24th section that full power is conferred on the Commissioners to determine these points; it provides :—

That where the Commissioners make an order for sale, the land or lease, or part thereof, to which such order shall relate, shall be sold by or under the control and direction of the Commissioners, by *public* sale or *private* contract, *together* or in *lots* or parcels, at such *time* and *place*, and generally in such manner as the Commissioners think fit.

The Commissioners have issued certain directions (in March, 1850), in reference to the preparation of the

posting and rental, and although practically many of the matters required are not called for, still it is right that, so far as the existing practice points out, strict attention should be paid to these directions. The name of the "Master" has been substituted for the "Commissioner."

Much care is required in the preparation of the posting and rental, and in the description of the property to be sold.

Commissioners' directions,
March, 1850.

The owner of the land, or his agent or solicitor, should be consulted as to the manner in which it may be expedient to divide the estate into lots; and the party having the carriage of the proceedings should give him notice of the day when he intends to apply to the Commissioners to settle the rental and postings.

When he applies to the Master he must be provided with a copy of the petition, of the absolute order for sale, and of the notice circulated among the tenants, pursuant to the 13th General Rule. He must also have copies or counterparts of the tenants' leases, and a copy of the lease, if the property to be sold is a lease, and a rental and posting prepared and ready for the approval of the Master.

The property should be divided into convenient lots, with a view to an advantageous sale. These lots may vary in size, according to circumstances, but their value should seldom be less than £200, or more than £5,000.

It will not, however, be necessary to keep within those limits under special circumstances; as, for instance, a fee-farm rent, whether it be large or small, may generally form a single lot. When a farm is held by a single tenant, it may be set up in one lot, although its value may far exceed the above amount; or, when the property to be sold consists of a lease in perpetuity, or other lease, it will often be more convenient to sell it together than to divide it; or there may be other special circumstances, which should be explained to the Master when the rental is in preparation. The description of each lot should contain the following particulars:—

First. The extent and character of the property, whether consisting of houses, land, mountain, bog, &c.

Second. The county and barony, or the town and street in which the lot is situated ; and if the lot consists of houses which have numbers in a street, the numbers must be stated.

Third. The rental of the lot must be stated. This rental must state:

1. The name of each immediate tenant.
2. The extent and description of his farm or holding, when he holds only a portion of the lot.
3. The annual rent which he is liable to pay, and the gale days ; and whether the rent includes tithe rent-charge, or is liable to any deductions.
4. The date of the instrument under which the tenant holds, and whether by lease or agreement, and the term for which he holds the land ; and if he holds for lives, the names of the lives still in being should be mentioned ; and, if for years, the rental should state when the term will expire ; and if he holds from year to year, it should state on what day the year terminates.
5. The rental must state whether the interest to be sold is fee-simple or leasehold ; and, if leasehold, it must state the term of the lease ; if it be a lease of lives renewable for ever, it must mention the rent, renewal fine, the date of the original lease, and of the last renewal, and the lives in the last renewal.
6. The rental of each lot must state all the outgoings to which the property in the hands of the purchaser will be liable, such as quit-rent, head-rent, tithe rent-charge, instalments under the Drainage or Land Improvement Act, &c.
7. It must state what documents will be handed to the purchaser with each lot, such as head leases, counterparts of tenants' leases, &c., and if any of these are not forthcoming, or cannot be delivered to the purchaser, it must state what copies or other secondary evidence can be given in their place ; and it should state any special provisions in the head lease, or tenants' leases, or any right of way or other easements, which may affect the value of the lot.
8. Such circumstances should be mentioned of locality, quality,

&c. as may give the public a fair idea of the value of the property ; but the party having the carriage of the proceedings gives this description on his own responsibility, and must take care not to deceive the public by any unfair or exaggerated representations.

When a lot consists of a portion only of a lease, and is intended to be sold subject only to a portion of the head-rent, it will be necessary to state in what manner the purchaser is to be indemnified against the residue of the head-rent ; whether by an apportionment under the Statute binding upon the landlord, or by an obligation upon the purchasers of the other portions of the lease, to bear their respective proportions of the head-rent. This observation applies to every case in which it is intended that, after the sale, any lot shall bear solely a certain part only of any annual charge, to the whole of which it, in common with other lots, was liable before the sale.

In addition to these directions, the Commissioners issued further Rules in November, 1851, in reference to the preparation and printing of the rentals, to which attention should also be given ; they are as follows :—

As it is desirable that the rental should be so prepared that the list of tenancies can be transferred without alteration into the conveyances, attention is called to the following points:—

Further directions, November, 1851.

1. That the statement of each tenancy should be complete in itself, without referring to the terms of any other tenancy ; and that all such phrases as “ditto,” “like tenancy,” “like term,” &c., should be avoided.

2. Where the holding is at will, or under the Court of Chancery, it should be stated that the tenant will be entitled to his emblements (if any), and to such right of entry as is incident thereto.

3. Where the holdings are under the Court of Chancery, and the rent has been recently reduced, it is sufficient to state the abated rent, without any reference to the former rent. Where the lettings are not made by the receiver, but the rent has been abated by the Master,

the original rent should be stated, and the fact and amount of the abatement should appear as an observation. Wherever an abatement has been made it should distinctly appear how far the purchaser will be bound by it.

4. Under the head of *Gale Days*, the precise days on which the rent is due should be stated, and not merely the month.

The Taxing Officer is instructed not to allow costs for any rental, unless copies thereof are lodged at the Commissioners' Office, within ten days after the final approval thereof. The Crier, who receives the copies, will give his receipt for them, properly dated. This applies equally whether the sale takes place in Dublin or elsewhere.

Some expense may be saved to the estate by having the rentals printed in a cheaper form than has been usual heretofore. It is sufficient to print them in ordinary newspaper type, and so as not to occupy more paper than is required by the description of the lots. Specimens of rentals, of which the Commissioners approve, have been deposited with the Auction Clerk, in whose office they may be inspected. The Master, on settling the rental, will (if it appear to him advisable) authorize the solicitor having the carriage of the sale to make the necessary arrangements with any newspaper proprietor, to have a certain number of these rentals stamped, so as to admit of their being forwarded, without expense, to any part of the United Kingdom.

SCALE OF CHARGES FOR PRINTING RENTALS.

Costs of
printing
rental.

For each page of the size of specimen rental:—

If 200 copies,	£2 5 0
Each 100 afterwards,	0 7 6

When the rental is printed as a Supplement, or Extra Edition, to a newspaper, with guaranteed circulation of at least 1,500 copies, to go free by post:—

For each page,	£8 0 0
For 200 hand copies of same, after such publication	} 0 12 6
Each 100 copies extra,	
Endorse page, for 100 copies,	0 4 0

The Commissioners approve of the annexed scale of charges for the printing of rentals. For rentals approved of, after the 10th of November, 1851, no higher charges will be allowed by the Taxing Officer, without the direction of a Commissioner. If the rental has been in type before that day, the Taxing Officer will allow the charges heretofore made, on the Master's certificate that it is a proper case to allow the same.

Where the petitioner desires liberty to bid, he should state his intention to the Master when he is proceeding to settle the rental, in order that the Master may, in approving of the rental, certify to the Commissioners whether there appears to him to be any objection thereto, and the notice to settle the rental should apprise the parties that such application will be made. Where this is not done, the liberty to bid will not be granted, except upon notice, the cost of which will fall upon the petitioner.

Shortly before the day of sale the solicitor should ascertain whether there be any arrear of tithe rent-charge, poor's rate, county cess, quit-rent, head-rent, or other outgoing; and he should take immediate steps to have any such arrear discharged, either out of the accruing rents, or out of the fund, so soon as it can properly be drawn upon, so as to prevent the necessity of applications by purchasers. When the particulars of sale declare that the quit-rent shall be redeemed by the Commissioners, the solicitor should, before the sale, take the necessary steps to have the purchase money of the quit-rent ascertained.

Having prepared the draft rental as carefully in accordance with the Commissioners' directions as possible, a notice of an application in the usual form may be served to have the rental settled by the Master; in case the tenants' objections have not been finally disposed of, such of them as have not should receive due notice (at least one week's) of the meeting to settle the rental.

It will be necessary to produce to the Master, when the case is called on, the following documents :—

Papers to be
produced on
settling
rental.

1st. The Commissioners' order referring the rental for settlement.

2nd. The attested copy of appearances entered, to compare with the notice of the application to settle the rental, to show that all parties who have entered appearances have received notice.

3rd. The absolute order for the sale.

4th. The final notices served on the tenants.

5th. The attested copies of the affidavits of such service.

6th. Certificate of objections or no objections filed by the tenants.

7th. Attested copies of all objections filed.

8th. The leases stated in the rental.

9th. The certificate of the Paymaster of Civil Services as to monies due or not for Government advances.

10th. The certificate of the Ordnance or Griffith's valuation.

It should also be shown that the owner, even though he had not appeared, had notice of the settling of the rental.

The Master having disposed of all objections by the tenants, and having finally settled the draft rental, it may be printed; the practice frequently is to print the draft before it is *finally* settled, and to get the proof sheets settled by the Master, which is the most convenient course, and may be followed, if no serious alteration in the draft is likely to take place in the course of its settlement.

When the Master shall have marked his approval upon the draft rental or the proof sheets, the draft posting may be prepared for his settlement; it should be drawn from the rental, in the following form :—

IN THE COURT OF THE COMMISSIONERS FOR THE SALE OF
INCUMBERED ESTATES IN IRELAND.

In the Matter of the Estate of } The Commissioners will, on ,
 A. B., Owner, } the day of next, at the
Ex parte C. D., Petitioner. } hour of 12 o'clock at noon, at their
Court Henrietta-street, Dublin, sell, by public auction, the fee and
inheritance (or other description of property, as the case may be), of
and in the following land (or lots of land, if in lots,) situate in the
barony of and county of :—

Lot 1.—The townland of , situate in the barony of ,
containing A. R. P., statute measure, A. R. P. of which are
unoccupied, and the rest in tenants' hands. The Ordnance valuation
is £ (and so on, describing the remaining lots concisely).

Dated this day of
Solicitor. Secretary.

Then should follow a short, but clear, statement of the situation and circumstances of the property, analyzed from the rental; and a reference for further information should be given to the *solicitor for the principal parties interested*, and to some persons in the principal towns in the neighbourhood of the property, to whom rentals should be sent.

It would be desirable, for the purpose of avoiding unnecessary expense in advertising, to make the posting as concise as possible; if there are many lots they can be arranged in a tabular form, nearly similar to the

form which is given for the recapitulation of the rental (*post*, p. 164).

The Master will initial this draft posting, and the case is then out of his office.

The next step to be taken is to lodge the draft rental and posting, as approved of by the Master, with the Examiner of the Commissioner in whose office the estate is, and to serve notice of an application to procure the Commissioners' approval of the rental and posting, and to have a time and place fixed for the sale.

Upon this application the consideration of special conditions of sale, sales subject to jointures or annuities, also whether the petitioner should be at liberty to bid (unless the Master had previously decided the last point), should be determined, and, of course, the notice of the application should apprise the parties of any special circumstances that are to be brought under the Commissioners' notice.

In cases where property is liable to jointures or annuities.

In cases where properties for sale are charged with annuities or jointures, the result of the sale, whether satisfactory or otherwise, will depend, in a great measure, upon the mode in which it is conducted; thus, if an estate of £1000 a-year be subject to a jointure or annuity of £300 a-year, it would be injudicious to offer the estate for sale in that manner; the probability would be that an intending purchaser, in making his calculations, will treat the jointure or annuity as a perpetual rent-charge, no matter how old the life may be, and thus the property will be brought forward for sale greatly depreciated.

There are several methods adopted in cases of this kind, and the Act gives ample powers to the Commissioners to deal with them. The 23rd section, which refers to the tenancies, contains this proviso at the latter end, apparently unconnected with its previous provisions:—

When the Commissioners shall think fit the sale shall be made subject to any annual rent-charge affecting the land or lease, or part thereof, or to any apportioned part of such charge as the Commissioners may think fit should remain charged thereon.

The 34th section, however, is more explicit, and gives clear and ample powers to the Commissioners, which, as it refers not only to annuities, but other matters requiring attention, is here given in full. It enacts:—

That it shall be lawful for the Commissioners to sell any land or lease, or part thereof, discharged from any crown-rent or quit-rent which they may be enabled and may, with the consent of the owner, think fit to purchase, or from any charge made by virtue of the Acts of the 6th year and 10th year of her Majesty, or either of them, which they may, with such consent, think fit to pay off or redeem; and in any such case the Commissioners shall, out of the money arising from the sale, and in preference to all other payments thereout, pay the consideration for the purchase of such crown-rent or quit-rent, or such sum as may be necessary for paying off or redeeming such charge; and it shall be lawful for the Commissioners, where they think fit, to pay to any person entitled to any annual or other charge, not being an incumbrance according to the definition of the Act, who may consent to accept the same, a *gross sum* in discharge or by way of redemption thereof, or of a part thereof, and where a part only of any land or lease subject to any incumbrance or

Commissioners may make provision as to incumbrances, charges, &c. to facilitate sales, &c., and distribution of purchase money.

charge is sold, to *charge* the part not sold with such incumbrance or charge, or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable or authorize persons to release the money arising from the part so sold from any incumbrance or charge, or to relinquish their claim on such money in respect thereof, without impairing or affecting such incumbrance or charge as to the remaining part of the land or lease originally charged; and the Commissioners, where they think fit, may invest or provide for the investment of money to meet any annual or periodical charge, or any other charge, incumbrance, or interest where, by reason of such charge, incumbrance, or interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and otherwise may make such orders and directions for applying the money arising from any sale in such manner as will secure the convenient application thereof, for the benefit and according to the rights of the parties interested in the land or lease, or part thereof, from the sale of which the same shall have arisen.

Under the last Act, 16 and 17 Vict., chap. 64, the Commissioners are also empowered to sell and convey any land subject to any right, title, or estate to or in *Dower*.

Redeeming
quit-rent.
Practice.

It will be seen that the Commissioners may redeem the quit-rent, and this is their constant practice. The mode of doing this is very simple: bring the *last* quit-rent receipt to the Quit-rent Office, in the Custom-house, and a form of application, and a calculation of the purchase-money necessary to redeem it will be given. The calculation will include the *costs of the conveyance, and all other fees and charges incidental to the official proceedings*, and on payment of that sum, which the Commissioners will order to be paid out of the proceeds of the sale, a proper conveyance of the quit-

rent so purchased will be given. The conveyance will be *enrolled at the expense of the Crown*, so that the solicitor's duty, when the Commissioners direct the purchase of the quit-rent, will be confined to a few attendances at the Quit-rent Office, and the procuring a draft for the amount of the purchase-money.

With regard to jointures or annuities, it will be seen that three courses can be adopted:—

Several modes of dealing with jointures and annuities.

1st. A gross sum may be paid in purchasing the jointure or annuity (with the consent of the party entitled).

2nd. It may be apportioned between lands sold and unsold lands, or charged exclusively on the latter.

3rd. The Commissioners may impound a portion of the purchase-money to meet any annual charge or contingent charge.

Frequently the course first suggested can be effected, namely, to deal with the jointress or annuitant, and agree upon a sum for the purchase of her interest, and this may be the most satisfactory way.

By purchasing jointure or annuity.

There does not appear to be any General Rule in reference to this section, pointing out the mode of proceeding, but in case a negotiation be entered upon with the jointress or annuitant, notice should, of course, be given to all parties who are interested, and the expediency of purchasing the jointure or annuity determined upon, and the Commissioners will make such order as may be necessary to carry out any approved arrangement.

Mode of proceeding.

In the matter of the Estate of *James Robbins*, the

following order, showing the course adopted by Mr. Commissioner Longfield, appears to have been made:—

That a sum of £600 be paid to Johanna Robbins out of the funds to the credit of the matter, by way of purchase of the jointure of £100 a-year, late currency, payable to her out of the lands (therein mentioned), unless cause be shown to the contrary in four days after service of the order on the petitioner, and the solicitors for all parties who have appeared.

By apportioning jointures and annuities.

In case of no arrangement being effected for the purchase of the jointure or annuity, the consideration will be, what parts of the property should be sold exonerated from it, and what parts should be retained, either unsold to meet it, or sold charged with the payment of it. These are considerations which will be altogether influenced by the circumstances of each estate, the amount of other incumbrances, the description of the property, and the age of the jointress or annuitant.

Purchase of annuities.

Another view of the case may possibly be advantageously considered, which would be to make arrangements for the purchase of an annuity, or to ascertain for what sum a Government annuity could be purchased, and if that be found satisfactory, to sell discharged from the jointure or annuity, and, with sufficient of the proceeds, purchase one instead. Very probably this would be effected with one-half of the sum that the property would be depreciated by selling subject to the annual charge; much, therefore, depends upon the judicious manner in which the arrangement of a sale of property, subject to annual charges, is effected.

Where there were prior and *puisne* incumbrances

affecting the inheritance, and an annuity of intermediate priority affecting only the life estate, the Court referred it to the Commissioner in Chamber, to value and ascertain and direct that a portion of the estate might be sold, sufficient to discharge the prior incumbrances, such lands to be sold discharged of the annuity, and declared that the residue should be sold subject to such annuity.

—*In re Sir R. B. St. George*, 4 I. Jur., 183.

Before disposing of the final settlement of the rental, the attention of the solicitor is requested to cases where purchasers have been already discharged in this Court in consequence of careless or improper rentals,* and upon the consideration of those cases, and the important judgments given by the Commissioners, the necessity for extreme accuracy in the rental, and perfect truth in every representation made, will be clearly seen.

There is but one other of the Commissioners' directions of March, 1850, in reference to the sale, to be noticed; it relates to the sale of leases, which involves much less difficulty than the sale of fee simple property; but the several directions and instructions given have equal reference to cases of this description so far as they properly apply.

If the interest to be sold is a lease in perpetuity, then accurate information should be obtained as to the existing lives in the lease. If any of the lives have dropped, the Commissioners will require that a renewal should be obtained, or the interest in fee acquired under the Statute, 12th and 13th Vict., before advertising the property for sale. It is thought desirable in such a case to acquire a fee, if practicable.

Commissioners' directions as to sale of leases.

Where the lives are *full*, the Commissioners authorize the party

* Chapter xiii.

having the carriage of the sale to acquire the fee, if the same can be done without materially delaying the sale. It may be observed, that the advantage of obtaining a Parliamentary title is much greater when the estate is held in fee, than when held under leases. The necessary expenses of renewals, or of obtaining the fee, will be allowed as costs in the matter.

These directions apply also in the case of church or college leases for years renewable for ever.

It will be observed that the Commissioners have power under the recent Act 16 & 17 Vict., Chap. 64, secs. 3 & 9, to convert a lease in perpetuity into a fee-farm grant, and to sell arrears of rent; the rules pointing out the course to be followed in such cases will be found in a subsequent part of this book, if published before it is completed.

Descriptive
particulars.

The rental having been approved of by the Commissioner, and prepared for the printer, an index, to go on a separate sheet in front of the lots, may be usefully added, containing "*descriptive particulars*," showing the situation of the property in reference to market and post towns, railways and rivers, and other matters that would enhance its value; and where there are a number of lots, a recapitulation should follow the description, and it should show the particulars of all the lots. The following form will be found to answer :—

Recapitulation.

RECAPITULATION OF FOLLOWING RENTAL.

Number of Lots.	Number of Tenants.	Rent Charge.	Quantity in Irish Measure.	Quantity in Statute Measure.	Yearly Rents.	Esti- mated Value.	Obser- vations.
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In the column for number of tenants, the number appearing in the rental of the lot can be given; and where

part is unoccupied it should be stated; thus, for instance, "ten tenants, and part unoccupied"—or if there be no tenants the lot should be stated to be unoccupied; and in the column for observations a description of the lot can be given in two or three words, thus: "pasture farm," or "pasture and tillage," or "chief rents," as the case may be: the recapitulation should be totted, and thus, at a glance, the full particulars of each lot, and of the entire estate, can be seen.

Having complied with all the directions given, and finally settled the proof sheet of the rental, no time should be lost in getting a proper number of copies struck off; and, if the property be worth the expense, and there are any demesne lands, or other circumstance to render it desirable, a lithograph map should be pro-
cured, to annex to the rental; but this should be determined upon at the time the rental is under settlement, and instructions given to the party to whom the lithographing will be entrusted, as it will take some time, and should be ready as soon as the proof sheet of the rental is settled.

Lithograph
map an-
nexed to
rental.

The number of copies of the rental required to be printed will be regulated by the value of the property; the smallest number cannot be well under 150, as it will be requisite to lodge fifty in the Court with the person appointed to receive them; and even in small properties 100 for distribution by the solicitor will be required; generally the number may be fixed at from 200 to 500; the expense of the increased numbers is very slight. The following is the by-rule under which the rentals should be lodged in Court:—

Number of
copies re-
quired of
rentals and
maps.

It is hereby directed by the Commissioners, that when they shall have approved of the draft of rental, according to the form of which any estate is to be sold, the costs of same shall not be allowed by them, unless the printed copies thereof shall be lodged in the office of the Commissioners within one week from the date of such approval by them.

18th March, 1850.

The number of copies required by this rule to be lodged is fifty.

Where sale
can take
place out of
Dublin.

It should be remarked here that if, from the smallness of the estate, or other considerations, the solicitor has reason to expect that the sale could be had, with more advantage to the parties, in the town adjoining the property, or other place than in Dublin, the Commissioners will, under the 17th General Rule, allow the biddings to be received in the country. The following is the Rule on the subject:—

Mode of pro-
ceeding.

That in any case in which it shall appear to the Commissioners that any premises can be sold by auction to better advantage out of Dublin, the Commissioners may direct that the biddings shall be made at such place, and before such person, as they shall for that purpose appoint, and thereupon such biddings shall be had accordingly, and shall be returned to the Commissioners, who shall declare the highest bidder the purchaser, unless the highest sum offered shall be, in the opinion of the Commissioners, clearly inadequate, or unless the Commissioners shall see good cause against confirming the sale.

Country
sales.

In cases where it shall be considered to be expedient to have the sale out of Dublin, the posting and rentals should be settled accordingly, and a respectable local auctioneer selected; the usual fee to be paid to him will be from two to five guineas, which, however, should cover his charges for circulating the rental locally.

In reference to country sales, the Commissioners' directions of November, 1851, provide, "that at the time when the day and place of sale are fixed by the Commissioner he will also appoint a day shortly subsequent to the sale upon which the biddings are to be submitted to him. This day should be stated both in the posting and rental in the following terms:—

"The biddings will be taken by the auctioneer on the day of , at , in the town of , commencing exactly at o'clock, and they will be submitted to Mr. Commissioner , at his chambers, on the day of , at 11 o'clock, *without further notice to any person.*

"It will not be necessary to serve any notice of submitting the biddings to the Commissioner.

"The auctioneer should be instructed simply to take the biddings for each lot separately, in the order in which the lots are placed in the rental, unless special directions are given by the Commissioner to take the biddings otherwise.

"Immediately after the conclusion of the biddings the auctioneer should prepare his certificate of the biddings for each lot, and forward the same forthwith, *by post*, addressed to the 'Auction Clerk, Incumbered Estates Court, 14 Henrietta-street, Dublin.'

"As the Commissioners ordinarily disregard all subsequent offers, it is desirable that the auctioneer should be instructed to announce this fact publicly before proceeding to take the biddings.'

The rental having been printed, and the draft posting approved of by the Commissioner, he will mark his

approval in the fold of the posting; upon the production of which the Secretary or Assistant-Secretary will enter the day of sale in the sale book, and sign the posting. Upon marking his approval on the draft posting the Commissioner will, at the same time, give directions for advertising the sale; and it would be desirable for the solicitor to be prepared, *before-hand*, with a list of the papers in which he thinks the posting should, with advantage, appear. This he could write in the fold of the draft posting, and it will save delay and trouble.

Selection of
papers.

Nothing may be so important as the selection of papers which should be the medium of circulating the notice of the sale, and too frequently the solicitor postpones this consideration until the moment he is referred to by the Commissioner to name the papers.

The subject of advertising the sales in this Court has given rise to such animated discussion, and to such full consideration, by the Commissioners, of the relative merits of the several newspapers in Dublin, and the matter is now so well understood by the profession and the public, that it is not considered necessary to refer to it.

However it is only fair to state that a paper devoted almost exclusively to advertisements in this Court deserves every encouragement from solicitors; for in it (*Incumbered Estates Gazette*) will be found, not only well arranged advertisements, but—what is of great importance to solicitors, and all interested in the proceedings of the Court—full and accurate reports of both the Court and Chamber business; which renders the paper most useful to solicitors and others for reference in relation to

all the proceedings in the Court. It is merely mentioned, as it professes to be especially devoted to the purposes of the Court. The Commissioners, however, do not limit the solicitor to one or two papers; according to the value and circumstances of the estate, from four to eight or ten may be selected, and the insertion of the posting in them will be authorized; but the solicitor should determine this after consideration, and before he is referred to by the Commissioner, who is generally influenced by the suggestions of the solicitor in giving his directions on this subject.

Number of papers.

The posting being entered and signed by the Secretary, and the advertisements directed, it is usual to get it printed in the shape of a placard or handbill, and a number of copies, according to the circumstances of the property, being struck off, the papers in which it is to appear should be furnished with a copy, with clear written directions as to the number of the insertions.*

Printing posting.

It will be necessary to preserve all papers in which the posting appears. Of course the solicitor will receive copies, and he should at once endorse and put them aside, the necessity for which will be seen by the following by-rule:—

Necessity for preserving papers.

Solicitors having the carriage of proceedings for a sale must, at least one week before the day fixed for the sale, procure from the

* It would be prudent for the solicitor to have a *distinct understanding* with the proprietors of newspapers, as with the surveyors, that the costs of advertisements are not to be paid until the proceeds of the sale are realized; otherwise he may be called upon to make very heavy advances. The proprietors of all the respectable established papers will act on this understanding.

Secretary to the Commissioners a certificate that the advertisements for sale have been duly published, in accordance with the Commissioners' directions; and in default of so doing, such solicitors will be disallowed all costs of the sale.

April 11th, 1850.

Distribution
of postings
and rentals.

If the handbills and rentals be distributed with judgment and care, it will be frequently found that, though the expense of doing so will not be a tenth part of the cost of the advertisements, the advantages will be far greater, and the solicitor will be allowed fairly and liberally in his costs, according to the trouble taken and the extent of the estate.

A sufficient number of copies should, in the first instance, be sent to the several parties to whom reference is made in the posting; copies should also be sent to any of the leading tenants who would be likely to become purchasers, and also to the owners of adjoining estates; the solicitor will be justified in specially calling the attention of such parties to the property.

As correspondents should be referred to in London or Edinburgh, if the property be such as to warrant the expectation of inducing capitalists to inquire after it, a proper number of rentals should be forwarded, and a few rentals and handbills may be advantageously circulated in the Chamber of Commerce in Liverpool and Dublin, and in any other places where the attention of capitalists may be attracted to the sale.

CHAPTER X.

SALE BY PRIVATE CONTRACT.

FREQUENTLY the Commissioners will, by the posting, specially authorize the solicitor to receive offers for the sale of the property, or some portion of it, by *private* sale. However, to warrant the solicitor in receiving such offers, it is not actually necessary that the posting should contain any statement to that effect, because, in such cases, it should be brought before the Commissioners, and it would be prudent to bring forward every reasonable offer, and the owner's and other parties' solicitors should be consulted, as the solicitor should not incur any personal responsibility in rejecting or passing unnoticed any offer that may be made, which, though apparently inadequate, may exceed the amount bid at the sale, and for which the property may be sold; he should, therefore, consult with the parties interested, and mention the subject to the Commissioners.

Private offers to purchase.

Mode of dealing with.

The notice of motion to consider the offer should be served on all parties, and is a Chamber motion, and may be in the following form :—

Notice of motion to consider offer.

CHAMBER MOTION.

Entitle in Matter. } Take notice, that A. B. has
 offered the sum of £ , for that
 portion of the property advertised

for sale, to which he is tenant, (or for lot 1, 2, or 3, as the case may be), and that I shall apply to Mr. Commissioner , on day, the instant, for his directions in reference to said offer, and if approved of, to declare the said A. B. the purchaser of said lot; and I have this day filed an affidavit in pursuance of the general directions on the subject, to be used on such application.

Dated, &c.

Affidavit to
ground mo-
tion.

This notice should be served on *all* parties, and the affidavit referred to should show that the sale will be beneficial to the parties in the opinion of the solicitor making the application, or that it has been submitted to the owner or other party interested, and that *no consideration has been directly or indirectly given or agreed to be given for the premises, except the purchase money offered.*

This affidavit should not be dispensed with in any case of private sale, and the solicitor should be prepared to show valuations of the lot in question.

Upon the subject of sales by private contract, and especially to the petitioner, the Court has had occasion to pronounce some important judgments determining the course that will be adopted in such cases.

As a *general practice*, the Court will not sell an estate by private sale to the petitioner, but if a strong case be made, and the petitioner who is the first incumbrancer waive all further claim on foot of his demand, the Court

may declare him the purchaser without a public sale.—
In re Mary Joyes and Others, 4 I. Jur., 16.

The Commissioners have jurisdiction, under the 26th section of the Act, to sell by private contract to the petitioner; the word “bid” is used in both the first and second parts of the section with reference to public sales, and the words “become purchaser” are applied in respect to private sales.—*Ib.*

If a substantial offer be made, and that the Commissioners are satisfied, on looking either to the Receiver’s accounts or to the rental and valuations, that opposition to the private sale is not *bonâ fide*, they will accept a private offer.—*In re John Lane*, 4 I. Jur., 65.

In the matter of the Estate of *Eliza F. West*, an offer of £90,000 was made to effect a private sale of the entire estate, before it was brought to public competition; and the remarks of the Chief Commissioner on the subject of private sales generally, upon deciding to reject that offer, may be usefully considered. He said :—

*In re Eliza
F. West.*

“Our general course of practice unquestionably is, to sell by auction; and our general course of practice, when we sell by auction, is to sell in lots. We, however, have sold a great deal of property, not by auction, but by private contract, and got great prices for it in that way. We have also sold a good deal of property in bulk, and not in lots. Our general practice is, however, that which I have stated; but our practice, I may say nearly always, if not invariably, is, not to sell property till it has been put before the public for public competition—not to sell it by private contract (of course we could not sell by auction) until it has been advertised. Now, I do not think we are called on very much to embarrass ourselves by looking

minutely into consequences. Otherwise, in struggling to obtain what we may suppose to be a good end, we should too often be called on to depart from those rules which, for the general advantage of all, we have laid down for our own government. In this particular case, certainly, I believe a large sum has been offered for this estate; and possibly if this property be brought to an auction, so much money may not be offered for it. On the other hand, it is possible, and not very improbable, that, if brought to an auction, more may be offered for it. It is difficult for the Court—it is impossible for the Court—to say with certainty whether the sum now offered is the utmost sum that could be realized if the estate were brought to auction or not. Under these circumstances, I do not think we can on that point make up our minds with that degree of certainty that would be satisfactory to ourselves. But there is in this case an ingredient which, I think, is dominant, and which, in my mind, ought to coerce us in adjudicating on this motion. It is this: that this property has not been held up to public competition. The public has not had an opportunity of offering for this estate by private contract, or in any other way. If this property had been advertised—I will say *well advertised*—for a reasonable period, six weeks, say, or two months; if rentals had been distributed, and matters of that kind done; and that then this gentleman, after that, had come in and offered so large a sum as £90,000, though I am not myself particularly inclined to sell by private contract, yet, if the estate were in my office, I would hesitate a long time before I would reject such an offer, made under such circumstances. But if I found a very valuable property like this, and a tolerably well-managed property too, let at rents considerably under Griffith's valuation—which is an unusual thing in this country, and which, I think, enhances the value of this property very considerably (for instead of having, as is generally the case in Connaught, to deal with a pauper population, the purchaser of this property will have to deal with tenants, not holding at rack-rents, but holding under the value)—if I found a property such as this in my office, I would not hesitate at all in rejecting a

private offer for it—even so large an offer as £90,000—made before the property had been advertised, or in any way placed before the public; at the same time, I hope it will be understood that I am far from wishing to deter capitalists from coming into Chamber with what they consider substantial offers, after properties have been advertised, and before they have been brought to auction. Under the circumstances which I have explained, we must refuse this motion, and direct that rentals be printed, and the property duly advertised.”*

* The property referred to in the foregoing judgment was subsequently sold, after the rentals were published, for £105,000, by private contract, in one lot.

CHAPTER XI.

CERTIFICATE OF ADVERTISEMENTS.—NECESSITY FOR ASCERTAINING STATE OF INCUMBRANCES BEFORE SALE.—PETITIONER OR INCUMBRANCERS BIDDING.—BUYING IN PROPERTY NOT ALLOWED.—OPENING SALE.—ADJOURNMENT.—COMPELLING PURCHASERS TO COMPLETE PURCHASE.—RE-SALE.—PAYMENT ON ACCOUNT OF COSTS.

Certificate of advertisements.

PREPARATORY to the sale the solicitor should procure a certificate of the publication of the advertisements. The object for which this certificate is required is to satisfy the Court, at the sale or subsequently, upon the taxation of the costs, that the solicitor has complied with the directions for advertising the sale.

The mode of obtaining the certificate is by producing all the papers in which the advertisements appeared to one of the officers in the Registrar's office, who will make a list of the number of publications of the advertisements in each paper; by keeping each set of papers together, and endorsing them, a good deal of trouble will be saved.

There are no other preliminaries necessary to call attention to before the sale.

Schedule of incumbrances.

Having disposed of all practical business arrangements in reference to the sale, the solicitor should devote the large interval that will elapse between the advertising and the sale in attending to the instructions given relat-

ing to the schedule of incumbrances. It would be most important that, *contemporaneously* with the sale, the draft schedule of incumbrances should be made out, in order not only to be prepared to allocate the funds with the least possible delay, after the sale, but to ascertain, as nearly as may be, the state of the incumbrances, with a view to induce those parties upon whose demands the proceeds of the sale will probably *hinge*, to be prepared to save *themselves* from loss by judiciously bidding, by which the probability is that without being obliged to take land, they will bring up the biddings of those really desirous of purchasing, secure themselves, and prevent the sacrifice of the estate. If puisne incumbrancers will take the trouble of calculating the precise circumstances of the property *before* the sale, and ascertain from what quarter competition for the estate is likely to come, a large increase in the biddings would frequently be obtained. Intending purchasers in many instances got property at hundreds, and in some instances, in the early progress of the Court, thousands, under what *they were prepared to give*, simply because there was no one to *compete* with them. Combinations, too, may be entered into between purchasers, where they are owners of the adjoining estates, or tenants upon the property for sale. It often occurs that a number of purchasers of this class come to a sale, where there may be several lots, having previously arrived at a perfect understanding amongst themselves not to bid against each other, or even to bid to a certain extent to *sham* competition, so that the property may be knocked down to them at a

Necessity for ascertaining exact state of incumbrances before the sale. Prudence of puisne incumbrancers being prepared to bid.

Combinations between purchasers.

low price. Arrangements can also be imagined by which adjoining proprietors, each *most desirous* of getting a particular lot, agree not to compete, but allow the lot to be bought in at the lowest sum by one of them, and to divide it afterwards.

If petitioner intend to bid he should obtain permission.

If upon these considerations, or independent of them, it is the intention of the *petitioner* to bid at the sale, it will be necessary to *obtain the leave of the Court*. The provisions of the Act authorizing *incumbrancers* to become purchasers, and to set off their purchase money against their demands, and authorizing the petitioner having the conduct of the sale to bid, are very important, and may be here conveniently referred to in connexion with the preceding remarks; they are contained in the 26th section, which provides:—

Incumbrancers may bid.

Where an incumbrancer purchases, Commissioners may authorize payment into the Bank of balance of purchase money, after retaining amount of incumbrances.

That it shall be lawful for any *incumbrancer* on, or person otherwise interested in, any land or lease, or part thereof (*other than the incumbrancer or owner upon whose application the sale has been ordered*), to bid at any public sale, and to become the purchaser at any public sale, or by private contract, in like manner as any person not interested therein might bid and become the purchaser; and, *by leave of the Commissioners*, it shall be lawful for the incumbrancer or owner *on whose application the sale has been ordered* to bid and become the purchaser; and where an incumbrancer on any land or lease, or part thereof, shall be the purchaser of such land or lease, or part thereof, the Commissioners may, where they think fit, authorize such purchaser to retain out of the purchase money the amount which might have been ordered to be paid thereout in respect to such incumbrance, in case the whole purchase money had been paid into the Bank under the Act, or such sum on account of such amount as the Commissioners may think fit, and to pay the residue only of the purchase money into the Bank; and where *at the time of authorizing such retainer as*

aforesaid the Commissioners shall not *finally* have ascertained and determined the priority and rights of such purchaser in respect of his incumbrance, and the amount which he would be entitled to be paid in respect thereof out of the purchase money, such retainer shall be *without prejudice to the power of* the Commissioners to require *such purchaser* to pay into the Bank the *whole or any part* of the amount so retained which ought to be so paid by him; and the Commissioners shall *withhold their certificate of payment*, herein-before mentioned, until they shall be satisfied that the full purchase money, less the amount which such purchaser would be entitled to be paid in respect of his incumbrance, has been paid into the Bank.

It will be seen by this section, that any *incumbrancer* can bid, without any order to authorize him; and if the purchase money will reach his demand, he can retain the amount of it, and be only required to lodge the difference (if any). It will be also seen, that the *petitioner having the carriage of the proceedings* can bid, by getting permission; this is had almost as a matter of course, but is indispensable, and the proper time to apply for leave is, when the rental is being settled by the Master; for, if the party having the carriage of the proceedings intend to bid, he may shape the lots in a manner more likely to suit his views as an intending *purchaser* than as a *seller*; and it would be right that the Court should be apprised, at that stage of the proceedings, that the petitioner intends to bid, for where a difference of opinion may arise as to the lots, the Master is usually influenced by the suggestions of the party having the carriage of the proceedings, whose views will generally get a preference; but if he intend to bid, it is manifest a different course will be adopted.—*In re John Curtin*.

Petitioner
should apply
for liberty to
bid when
rental is be-
ing settled.

If petitioner omits to apply then he should do so afterwards, on special notice to all parties.

If, however, the petitioner had not made up his mind to bid at the time of settling the rental, and if his intentions be *bond fide*, upon after consideration, to become a bidder, to prevent the property from being sacrificed, the Commissioners will, no doubt, give permission at a later stage of the proceedings, but it should be applied for on notice to all parties.*

No private arrangement as to buying in lots will be allowed.

In both cases the permission to bid should be a matter of record, and the party applying should get a regular order, or, at all events, see that it is entered in the Master's or the Commissioners' notes.

No private arrangement should be entered into between the parties to *buy in* any portion of the property. The Commissioners have declared that they will not act upon, or be parties to any such arrangement: they understand parties buying in their Court to be *bond fide* purchasers.—*In re John M' Loughlin*.

Lands sold under the Court were purchased by M'K., who immediately sold them to A. for £50 more than he had paid, and received his I. O. U. for the amount, and, with A.'s consent, signed a declaration of trust in the sale book. A. refused to complete the purchase; Held, on application to compel him to do so, that the Court could not recognize the sub-sale.—*In re P. J. Stirling*, 3 I. Jur., 229.

The practice of the Court is only to recognize the person who bids for the property, where he bids in his own name; and where he bids with consent for another

* The costs of the application and order for liberty to a party to bid are purchaser's costs, and not chargeable against the fund.

person to hold *both* accountable, unless he shall have previously declared to the Court that he is only bidding as a trustee.—*Ib.*

Where a sub-sale takes place, or for any other cause it is the desire of the purchaser on record that some other party should be placed in his stead, so as to release him from responsibility, his proper course will be to **make** an application to that effect to the Court.—*Ib.*

Unless the person who becomes the purchaser states that, *at the time of the sale*, he bought in trust, and signs the sale book declaring the trust, it will be necessary to apply to the Commissioner for permission to do so at a subsequent period.

Where a party (a creditor), through mistake or misapprehension, omitted to bid for a certain lot at the sale, and it was bought in for £3700, by the solicitor having the carriage of the proceedings, for another party, without, however, having obtained a regular written order authorizing him to bid, an application to open the sale, upon the ground that there was a misapprehension, which, however, did not appear, and that the sale was at a gross under-value, and that the lot had been bought in by the solicitor having the carriage of the proceedings without a regular order for liberty to bid, *and offering to bid* £1300 more for the lot; Held, that the sale should not be opened, the party applying having been present, and having as good an opportunity of bidding as the purchaser, and not having objected in the first instance to the solicitor bidding.—*In re Thomas Philips*, 2nd July, 1852.

In that case the Chief Commissioner disapproved of the practice of solicitors having the carriage of the proceedings bidding for property they were selling, as calculated to damp the spirit of bidders, and stated that it was probable that a General Rule on the subject would be made.

Although, by the 22nd General Rule, fourteen days are allowed for the lodgment of the purchase money, the Commissioners frequently require that an immediate deposit should be made as earnest for the purchaser's intention and ability to complete his purchase, and to have means, at the cost of the person unable to complete his purchase, of providing for the expense of a re-sale, if it should become necessary.

This practice usually arises in cases where the owner in an insolvent estate comes forward to bid either personally or through members of his family, or by unprofessional persons unknown to the parties.—*In re W. B. Waller*, 4 I. Jur., 15. *In re M'Loughlin*.

Opening
sales.

The Commissioners have adhered, in an almost inflexible manner, to their contracts with purchasers, and have always endeavoured to give them the benefit of their purchases, no matter what the consequences to other parties may be; hence, applications to open sales have been rarely successful.

Indecision on the part of intending purchasers, at the time of the sale, has frequently lost them estates which they have been most anxious to obtain, even at a far higher price than that at which it has been knocked down to parties beside them; for the Commissioners

will not receive a bidding, even immediately, on the declaration of the purchaser; and they have gone so far as to rule that where a party was ready, if necessary, to swear that he had bid *before* the purchaser was declared, but where neither the presiding Commissioner nor the Auction Clerk heard him, they would not open the sale, simply because the intending purchaser should have made himself heard.—*Anon.*

As a general rule, the Commissioners will not open or set aside a sale which took place either in the country or in Dublin, even where the property may be considered to have been sold *cheaply*, if the proceedings have been regularly conducted, and the purchaser in no default.

In case, however, the value be not offered, the Commissioners have full power to adjourn the sale, under the 15th General Rule, which directs:—

Adjournment of sale.

That if, upon a sale by auction, the highest price offered for any lot be, in the opinion of the Commissioners, clearly inadequate, they shall be at liberty to adjourn the sale of that lot to a future day; and no sale of any lot shall be deemed to have been made, until the amount of deposit (if any) required by the conditions of sale shall have been actually paid in the manner prescribed by such conditions.

Where the value, or supposed value, is *nearly* offered, it will not be prudent to seek for an adjournment; the expenses of advertising the sale a second time will be serious, and the delay and chances of not getting an equally advantageous offer should be considered. In one case, where a solicitor pressed for the adjournment of a sale, on the grounds that the sum offered was

Imprudence of adjourning.

greatly deficient, the sale was adjourned at his instance, and at an adjourned sale in the country, he became the purchaser himself at a less sum. The Commissioners refused to confirm the sale to him, although it was positively sworn that he bid solely to prevent a sacrifice. The property was ordered to be re-sold, and all the expenses consequent on the adjournment were disallowed.—*In re John Curtin.*

Compelling
purchasers
to complete
purchase.

When a sale shall have been effected, it will be the duty of the petitioner's solicitor to see that the purchasers have lodged their purchase money; and if not, proceedings should be taken, either to compel them to do so, or to re-sell the estate.

The following is the General Rule which regulates the practice on the subject:—

That in case the purchase money and any interest which may have accrued upon it under the terms of the sale, or by law, shall not be paid into the Bank within fourteen days after the sale, any party to the proceedings may procure an order for payment; or the Commissioners may make such order without any special application, or may, if they think proper, re-sell the property, and the expenses incident to such re-sale, together with the deficiency, if any, in the price obtained below the former price, shall be paid forthwith by the purchaser at the former sale; for which payment the deposit (if any) shall be a guarantee; but he shall not be entitled to the benefit of any excess in the price which may be obtained at the latter sale.—*General Rule 22.*

Where default by purchaser.

There have been but few instances where the purchasers have committed default. In the matter of the estate of *John M'Loughlin* there was default, and the lot was ordered to be re-sold, and that if it did not bring a sum

equal to the first the party to pay the difference, and also the costs of the application, and the re-sale. In the same matter an attachment was issued against D. M'Loughlin, the purchaser of other lots.

Re-sale ordered, and all expenses and costs to be paid by first purchaser, or attachment will be issued.

In very rare instances it will be found that the money will not be lodged in time. Unless, however, the purchaser lodges it *within* fourteen days he will be liable to pay interest at 5 per cent., without which the purchase money will not be received.

Purchaser liable to interest at 5 per cent. unless money lodged within 14 days.

Where a purchaser purporting to reside in England failed to complete the purchase, a conditional order for an attachment will be granted, to be made absolute if the money be not paid before a specified time. And where a letter directed to such address is returned through the Dead Letter Office, and his real address is not known, publication of the conditional order in an Irish newspaper, and in an English paper circulating in the neighbourhood where he purported to reside, will be deemed good service thereof.—*In re J. W. M. Wall*, 3. I. Jur., 191.

Where a person purchased an estate for which (owing to fortuitous circumstances) he was unable to lodge the purchase money, and he stated the facts fairly to the Court within a reasonable time, and applied to be released from the purchase, or offered to assign the lots to the parties interested, which was refused, subsequently having agreed to assign his purchase to a third party, the Court permitted him to declare a trust in favour of such party.—*In re Thomas Hemsworth*, 3 I. Jur., 402.

In case a deposit be lodged within the proper time,

the Commissioners may permit the balance of the purchase money to remain out at 5 per cent. interest for a short time, and if it appear that the purchaser is getting funds out of the proceeds of other sales in the Court, the indulgence will be rather liberal; but in such cases it would be prudent to bring the matter under the notice of the Commissioner in the matter in which the sale is pending *previously to the sale*, when it can be ascertained what time can be calculated upon without injury to the parties.

A conditional order for an attachment for not lodging the purchase money will be obtained at the expiration of fourteen days, as a matter of course, from the Registrar, on the production to him of the Auction Clerk's certificate of the sale, and the Accountant's certificate of no money having been lodged by the purchaser.

Adjourned
sale.

In cases where sales have been adjourned for want of bidders, or insufficient sums offered, or where the purchaser has failed to complete his purchase, an adjourned posting will be necessary, or rather another day selected for the sale, and the property again advertised in the same way, as already pointed out; but if, by reason of any injudicious or erroneous division of lots, or the existence of annuities or jointures, there were no bidders, or insufficient sums offered, it may be necessary to recast the rental, to get rid of the objections, or to deal with the annuitant or jointress for the purchase of the incumbrance, as already pointed out.

Amendment
or altera-
tions in
rental.

Where, however, all the purchase money has been lodged, the allocation of it should be very speedily

effected, if the instructions for the settlement of the schedule of incumbrances be attended to.

Upon the execution of the conveyance to the purchaser, if the searches shall have been obtained, and the draft schedule of incumbrances prepared and lodged, the Commissioners will usually pay a sum sufficient to cover the *out-of-pocket expenses* to the solicitor having the carriage of the sale. The course to be adopted is, to prepare a schedule showing the surveyor's, advertising, printing, and other accounts which the solicitor has paid, *or is liable for*, and to apply to the Commissioner in the matter, *as a motion of course*, for a sum to meet the amount. The Commissioner will either examine the ^{How obtained.} schedule himself, and fix a proper sum, or he will refer it to the Taxing Officer, who will report upon it, and the Commissioner will draw in favour of the solicitor for the amount. In some cases, however, the Commissioners require notice to be given of this application.

CHAPTER XII.

PROCEEDINGS ON BEHALF OF PURCHASERS.—LODGMET OF PURCHASE MONEY.—FORMS OF CONVEYANCES.—EXECUTION OF CONVEYANCE.—DISCHARGING RECEIVER.—INJUNCTION TO PUT PURCHASER IN POSSESSION.—EFFECT OF CONVEYANCE.—LEASES, MAPS, ETC., TO WHICH PURCHASER ENTITLED.—ATTORNMENT BY TENANTS.

THE purchase money must be paid into the Bank of Ireland, to the credit of the matter in which the purchase was effected, and the purchaser has no occasion to see in what manner it may be afterwards disposed of. The 35th section provides :—

Payment of
purchase
money.

That the purchase money in every case shall be paid into the Bank of Ireland, to an account to be there opened in the name of the Commissioners, and to the credit in each case of the estate sold, or as the Commissioners by General Rule or special order shall direct ; and on the notification, by the said Bank to the Commissioners, of the receipt of the money, a certificate by the Commissioners of such payment shall be endorsed on or written at the foot of the conveyance or assignment ; and on such payment into the Bank, the purchaser shall be discharged from all liability in respect of the application of the money so paid, and such certificate of the Commissioners shall be evidence of such payment.

The 16th General Rule directs :—

That immediately after a sale, whether by public auction or private contract, the purchaser shall obtain a certificate, under the seal of the Commissioners, that he is the purchaser, thereby authorizing him to pay the amount of his purchase money into the Bank of Ireland, to the account of the Commissioners, to the credit of the estate of A. B., of, &c. [*as the case may be*], and shall procure the notification by the Bank, to the Commissioners, of the receipt of the money ; and no sale shall be opened merely by reason of any advance being made upon the biddings or price.

Purchasers may obtain Commissioners' certificate authorizing him to pay money into Bank.

Sale not to be opened merely by an advance in price.

The purchaser's solicitor will obtain a certificate of the sale from the Auction Clerk, upon the production of which in the Secretary's Office a certificate will be obtained, on which the money can be lodged in the Bank of Ireland, and a receipt be obtained. This receipt must, according to a by-rule of the Court, dated 19th April, 1850—

Be brought into the office of the Accountant of this Court upon the same day the lodgment is made, and in no case shall money be deemed to be lodged in Bank until the receipt therefor shall be, as hereby directed, deposited with the Accountant.

Having lodged the money, the draft conveyance should be prepared. The form is regulated by the 24th section, which provides that—

Provisions of Act regulating conveyance.

The conveyance or assignment of the land or lease, or part thereof, shall be made by the Commissioners under their seal, and shall be signed by two of the Commissioners ; and the execution by any other party of such conveyance or assignment shall be unnecessary ; and such conveyance or assignment shall express or refer to the tenancies, leases, and under-leases (if any), and charge (if any) subject to which

Conveyance to be signed by two Commissioners. Tenancies to be stated in conveyance.

the sale is made, and may be in the form contained in the schedule to the Act, or to the like effect, with such limitation of uses and other additions or variations as, with the approval of the Commissioners, the purchaser may direct.

And the 18th General Rule directs:—

Conveyance
to be pro-
pared at cost
of purchaser.

That the conveyance or assignment of all premises sold by the Commissioners shall be prepared by and at the expense of the purchaser, and the draft thereof shall be approved of by the Commissioners, or by the Commissioner to whom the matter is referred. It shall specify the tenancies (if any), subject to which the sale is made; and any apportionment of rent between the purchaser and the proprietor, of other lands demised with the lands sold, or any part thereof, and any rents or incumbrances remaining charged upon the property, or any part thereof, in the hands of the purchaser; and the Commissioners shall, when necessary, ascertain and define the relative rights of the purchaser and the prior possessor, with respect to any crops on the land.

THE CONVEYANCE.

Preliminary
directions by
Commis-
sioners, 1st
Nov., 1851.

All conveyances to be executed by the Commissioners shall be drawn according to the forms subjoined hereto, as nearly as the circumstances of each case will permit; and the drafts and schedules annexed thereto, before being submitted to the Commissioners, shall be settled by the Master, who is to certify to the Commissioners his approbation thereof, and that the same correspond with the rental and the conditions of sale, and with the grants, leases, or other documents referred to in the conveyance.

Form No. 1.
**Conveyance
of fee-sim-
ple.**

[NOTE.—The Schedule should ordinarily follow the rental, omitting the observations, except where they explain the terms of the tenancy ; and the rental should always be prepared with a sufficient degree of precision and accuracy of statement to admit of its being made a part of the Formal Conveyance. Where there are not more than two tenancies, it will be better to insert them in the body of the Deed, and to omit the Schedule. Where there are tenancies determined by the operation of the Conveyance, such as holdings at will, or under the Court of Chancery, pending a cause or matter, they should be stated

in the Schedule with this observation: "This tenancy is determined by this Conveyance. The tenant is entitled to his emblements, if there be any on the land, and to such right of entering on the lands as is incident thereto."]

Variation of
above form
for different
kinds of prop-
erty.

Houses.

"The house and premises known as No. 117 Drogheda-street in the parish of St. Anne in the city of Cork with all out-buildings yards and appurtenances usually occupied therewith"

Tithes, &c.

"The impropriate tithes or composition or rent-charge in lieu of the impropriate tithes arising from the lands situate in the several parishes of Coola and Dunmore in the barony of Ardee and county of Louth and also the advowson of the vicarage of the parish of Coola"

Rectories.

"The advowson of the rectory and parish church of the parish of Lower Slane in the barony of Ardee and county Louth."

Form No. 2. WE

and

Conveyance
of land in-
cluded in a
fee-farm
grant.

two of &c. under the authority &c. in consideration &c. do grant unto the said William Fox the town and lands of Redhill situate in the barony of Ballymoe and county of Mayo containing 350 acres 3 roods and 16 perches statute measure or thereabouts and described in the map annexed hereto with the appurtenances excepting the mines* and minerals and the royalties in the same manner as they were excepted out of a former conveyance of the

* The exceptions are to follow the words of the fee-farm grant; if there be no exceptions, this part will be omitted, and the fee-farm grant will be described in the statement of the rent subject to which the land is sold.

said lands made by an indenture dated the 8th day of September 1676 and made between William O'Connor Esq. of the first part and Stephen Butler gentleman of the second part, *to hold the same unto the said William Fox his heirs and assigns for ever subject to the perpetual yearly rent of £100 late currency (equivalent to £92 6s. 2d. sterling) created by the said indenture†, and to all powers and remedies for enforcing payment thereof or existing in respect thereof and to the covenants conditions and clauses contained in the said indenture on the part of the grantee so far as they relate to the said lands‡, and subject to the leases and tenancies mentioned in the schedule hereto. In witness whereof &c.

VARIATION WHERE LANDS INCLUDED IN A FEE-FARM GRANT ARE
CONVEYED IN SEPARATE LOTS.

First. Where one lot is to bear the whole rent :—

* If the fee-farm grant be made under the Renewable Leasehold Conversion Act, add "being a Conveyance under the provisions of the Renewable Leasehold Conversion Act, in lieu of a certain lease for lives renewable for ever;" and if it be made under the Church Temporalities Acts, add, "being a conveyance under the provisions of the Acts to alter and amend the laws relating to the temporalities of the Church in Ireland in lieu of a lease of the same lands;" and in such case, in stating the rent, add, "which rent is subject to variation in amount under the provisions of the said Acts."

+ Where there are penal rents, accates, or other duties reserved, they should be stated in addition to the ordinary rent.

‡ If the grant be a grant in lieu of a *sub-lease*, or if, for any other reason, there be prior fee-farm rents, add, "and without prejudice to a certain other fee-farm rent issuing out of the said lands created by a deed dated &c., but which rent is payable in the first instance by the person entitled to the said rent of £100;" and so on for the others.

CONVEYANCE OF THAT LOT.

“Do grant unto the said William Fox that part of the town and lands of Redhill in the barony of Ballymoe and county of Galway which is described in the map annexed hereto containing 127 acres and 13 perches with the appurtenances, excepting the mines and minerals and royalties in the same manner as they were excepted out of a conveyance of the said lands of Redhill made by an Indenture dated the 8th day of September 1676 and made between &c.; to hold the same unto the said William Fox his heirs and assigns for ever subject to the perpetual yearly rent of £100 late currency (equivalent to £92 6s. 2d. sterling) created by the said indenture, and to all powers and remedies for enforcing payment thereof or existing in respect thereof, and bound to indemnify all other lands charged with the said rent from the same, and subject to the covenants conditions and clauses contained in the said indenture on the part of the grantee so far as they relate to the lands hereby conveyed, and subject to the leases and tenancies mentioned in the schedule hereto In witness whereof &c.”

[See Notes to last Form.]

CONVEYANCE OF THE OTHER LOT.

“Do grant unto the said John Wilson that part of the town and lands of Redhill in the barony of Ballymoe and county of Galway which is described in the map annexed hereto, containing 323 acres 3 roods and 3

perches statute measure or thereabouts with the appurtenances, excepting, &c. (*as before*) to hold the same unto the said John Wilson his heirs and assigns for ever subject (in conjunction with the other part of the lands of Redhill containing 127 acres and 13 perches statute measure) to the perpetual yearly rent of £100 late currency (equivalent to £92 6s. 2d. sterling) created by the said indenture, and to all powers and remedies for enforcing payment thereof, or existing in respect thereof but indemnified against the said rent and all costs charges and expenses occasioned by the non-payment thereof by the said other part of the lands of Redhill which has been sold by the said Commissioners subject to the whole of the said rent and subject to the covenants &c. (*as before*)."

Secondly. Where each lot is to bear a portion of the rent :—

To hold the same unto the said William Fox his heirs and assigns for ever, subject (in conjunction with the other part of the lands of Redhill containing 127 acres and 13 perches statute measure) to the perpetual yearly rent of £100 late currency (equivalent to £92 6s. 2d. sterling) created by the said indenture, and to all powers and remedies for enforcing payment thereof or existing in respect thereof, but indemnified against the annual sum of £32 6s. 2d. part of the said rent and against all costs charges and expenses occasioned by the non-payment of such part by the said other part of the lands

WHEREAS by an Indenture dated the 7th day of September 1775 and made between the Right Honourable John Earl of C. of the one part and John Stokes of the other part, the said Earl did assure unto the said John Stokes the town and lands of Redhill in the barony of Ballymoe and county of Galway, therein stated to be in the occupation of William Hearne, excepting thereout and reserving all mines and minerals under the said lands and all timber and timber trees and underwood thereon and all royalties and full liberty of hunting hawking fishing and sporting upon the said lands to hold the same, unto the said John Stokes his heirs and assigns for ever, he and they paying therefor yearly the annual sum or rent of £325 late currency (equivalent to £300 sterling), payable half-yearly on the 1st day of May and 1st day of November in each year, with two fat hogs and one capon at Christmas or £3 late currency yearly in lieu thereof and a heriot of 10s. on the death of each principal tenant on the said lands, and with certain powers of distress for the recovery of the said rents duties and heriots and of entry for non-payment thereof Now we and two of the &c. under the authority &c. in consideration

* If there are several lots, each of which bears a part of the rent, the other indemnities will be added here in similar terms.

&c. do grant unto the said Henry Gorman the said perpetual yearly rent of £300 created by the said Indenture, and all other rents duties and heriots thereby created or reserved, and all powers and remedies for the recovery thereof or existing in respect thereof, and also all the mines minerals timber timber trees underwood royalties rights privileges and liberties excepted or reserved by the said deed, in the same manner as they are thereby excepted or reserved, with the appurtenances thereto belonging, and all the estate and interest of the grantor under the said deed, to hold the same unto the said Henry Gorman his heirs and assigns for ever subject to the covenants conditions and clauses contained in the said indenture on the part of the grantor so far as they relate to the said lands In witness whereof &c.

WHEREAS by an Indenture of lease dated the 7th day of April 1820 and made between A. Berry of
of the one part and C. Drew of
other part, the said A. Berry did demise unto the said C. Drew the town and lands of Clonea in the barony of Ikerrin and county of Tipperary excepting &c. to hold the same to the said C. Drew his heirs and assigns for the lives of the three *cestui qui vies* therein named, and the survivors and survivor of them and for the lives of such persons as should from time to time for ever thereafter be added pursuant to the covenant for perpetual renewal thereafter contained, at the yearly rent of £100 late currency (equivalent to £92 6s. 2d. sterling) payable half-yearly on every 1st day of May and 1st day of

Form No. 4.
Conveyance
of lease for
lives renew-
able for ever.

November in each year, and the said Indenture contained a covenant on the part of the said A. Berry for perpetual renewal of the said lease on payment of a peppercorn on the fall of each life And whereas the last renewal of the said lease was made by an Indenture which bears date the 1st day of February 1844 and made between &c. and such renewal is for the lives of E. F. G. H. & I. L. and the survivor of them Now we
and

two of the Commissioners for sale of Incumbered Estates in Ireland under the authority of an Act of Parliament passed in the 13th year of the reign of Queen Victoria intituled "An Act &c.," in consideration, &c. do grant unto the said R. S. the said lands of Clonea in the barony of Ikerrin and county of Tipperary expressed to be demised by the said hereinbefore recited Indenture (except as in the said lease is excepted) with the appurtenances, to hold the same unto the said R. S. his heirs and assigns for the lives of the said E. F. G. H. and I. L. and the survivors and survivor of them, and for the lives of all such other persons as shall for ever hereafter be added pursuant to the aforesaid covenant for perpetual renewal, subject to the payment of the rent reserved by the said lease and to the performance of the covenants and agreements on the lessee's part therein contained, and subject also to the several under-leases and tenancies referred to in the schedule hereinunder written* In witness &c.

* If there are any exceptions or reservation, they should be stated in terms in the recital of the lease.

SCHEDULE REFERRED TO IN THE FOREGOING CONVEYANCE.

Where the lease is sold in different lots the form will be varied as to the parcels, and the mode of stating the rent, in a manner similar to the form above given in the case of a fee-farm grant.

WHEREAS by an Indenture dated the 1st day of May Form No. 5.
1810 and made between William Allen of the one part Conveyance
and Stephen Potts of the other part of a lease for the said William years.
Allen did demise unto the said Stephen Potts the house
and premises situate and being No. 8 Maiden-lane in
the parish of St. Anne in the city of Cork, with the out-
buildings garden yard and premises, therewith occupied
to hold the same unto the said Stephen Potts his execu-
tors administrators and assigns for the term of 989 years
computed from the 29th day of September 1809, at the
rent of £30 per annum payable half-yearly, and subject
to certain conditions covenants and agreements on the
lessee's part contained in the said Indenture Now we
two of &c. under the authority
&c. in consideration &c. do grant
unto the said Richard Ellis the said house and premises
expressed to be demised by the said indenture, situate in
the parish of St Anne in the city of Cork, with the
appurtenances, to hold the same unto the said Richard
Ellis for the unexpired term of 989 years created by the
said indenture, at the rent thereby reserved and subject
to the conditions covenants and agreements on the lessee's
part herein contained, and subject to the tenancy from

year to year of Eleanor Phillips, at the rent of £70, payable half-yearly on the 1st day of May and 1st day of November in each year, and the year of whose tenancy is determinable on the 1st day of May in each year In witness &c.

[Recite the Lease as in previous Form.]

Form No. 6.

Conveyance
of a part of
a lease,
where other
part is not to
be sold.

And whereas under the provisions of a certain Indenture dated the 8th day of August 1813 and made between &c. (being a deed of partition of the said lease) the said lease became divided into three parts, and one of such parts containing 27 acres and 8 perches of the said demised lands and marked A in the map annexed to the said deed, was allotted to John Reed subject to £13 per annum part of the said reserved rent, and another of such parts containing 22 acres of the said demised lands and marked B in the said map was allotted to Joseph Reed subject to £10 per annum part of the said reserved rent, and the other part of such lease, containing 16 acres of the said demised lands and marked C in the said map was allotted to Isaac Reed subject to £17 per annum residue of the said reserved rent, and the said Indenture contains mutual agreements between the said parties for indemnity in respect of the said rent and of the covenants contained in the said lease Now we
two of &c. under the
authority &c. in consideration, &c. do
grant unto the said William Birnie that part of the said

lands demised by the said lease which was allotted as aforesaid to the said Joseph Reed, situate in the barony of Ardee and county of Louth, with the appurtenances, to hold the same unto the said William Birnie his heirs and assigns for the unexpired term of years created by the said lease, subject to the rent thereby reserved but with the benefit of and liable to the provisions contained in the said deed of the day of and subject to the covenants conditions and agreements on the lessee's part contained in the said lease, so far as they relate to the lands hereby conveyed, and subject to the tenancies referred to in the schedule hereto In witness &c.

To hold the same unto the said William Hoskins his heirs and assigns, subject to the leases and tenancies referred to in the Schedule hereto, and also subject to a jointure rent-charge of £300 late currency per annum (equivalent to £276 18s. 6d. sterling) for the life of Mary the wife of Joseph Scott (to commence after the decease of her said husband in case she shall survive him), created by an Indenture dated the 8th day of November 1799 and made between &c. and to all powers remedies and terms of years (if any) for securing the same.

Form No. 7.

Habendum where the estate sold is charged with a jointure.

And also subject to a jointure rent-charge of £300 late currency per annum (equivalent to £276 18s. 6d. sterling) for the life of Mary Scott the widow of Joseph Scott deceased, created by an Indenture dated the 8th

Where one lot is to bear the whole jointure; *Habendum* in conveyance of that lot.

day of November 1799 and made between &c., and payable half-yearly on the 25th day of March and 29th day of September of each year, and all powers remedies and terms of years (if any) for securing the same, in full exoneration of all other hereditaments charged with the said jointure.

Habendum
in convey-
ance of any
other lot of
the same
estate.

And also subject (in conjunction with the lands of Clonmackon and Tarmon in the aforesaid barony and county) to a jointure rent-charge of £300 late currency per annum (equivalent to £276 18s. 6d. sterling) for the life of Mary Scott the wife of Joseph Scott deceased created by an Indenture dated the 8th day of November 1799 and made between &c. and payable half-yearly on the 25th day of March and the 29th day of September of each year, and to all powers remedies and terms of years (if any) for securing the same, but indemnified against the said jointure rent-charge and all costs charges and expenses occasioned by the non-payment thereof by the said lands of Tarmon which have been sold by the Commissioners charged with the said jointure, in full exoneration of all other lands liable thereto.

Habendum
where each
lot bears a
portion.

And also subject (in conjunction with the lands of Clonmahon and Tarmon in the aforesaid barony and county) to a jointure rent-charge of £300 late currency (equivalent to £276 18s. 6d. sterling) per annum for the life of Mary Scott the widow of Joseph Scott deceased created by an Indenture dated the 8th day of November 1799 and made between &c. and payable

half-yearly on the 25th day of March and the 29th day of September of each year, and to all powers remedies and terms of years (if any) for securing the same, but indemnified against the annual sum of £100 sterling part of the said jointure, and all costs charges and expenses occasioned by the non-payment of such part by the said lands of Clonmahon which have been sold subject thereto, and indemnified against the further annual sum of £100 sterling other part of the said jointure and all costs charges and expenses occasioned by the non-payment of such part by the said lands of Tarmon which have been sold subject thereto, and liable to bear the annual sum of £76 18s. 6d. sterling residue of the said jointure, in full exoneration of all other lands charged with the said jointure.

NOTE.—If any gale of jointure have accrued between the sale and the date of the conveyance, it will be necessary to convey, not only subject to the jointure, but also to the arrear thereof which fell due on the day of last past.

The above Forms relating to a Jointure may be readily adapted to any other annuity or charge. It must always appear how the charge was created, and for what period it exists, and at what date it is payable, and (where there are several lots) the precise manner in which it is to be borne.

Where the purchase money is wholly paid by means of an incumbrance:—

“In consideration of the sum of £5000 ascertained by

Modes of
stating the
considera-
tion adapted
to all the
above forms.

the Commissioners to be due to John Creed of
on foot of incumbrances affecting the estate of John
Bateman owner and by the said Commissioners autho-
rized to be retained by the said John Creed in discharge
of the purchase money of £5000 for which he has pur-
chased the hereditaments hereinafter mentioned.”

Where part of the purchase money is paid by means of
an incumbrance.

“In consideration of the sum of £1000 by John Creed
of paid into the Bank of Ireland to our account to
the credit of the estate of John Bateman owner, ex parte
William Stokes petitioner; and in consideration of the
further sum of £4000 ascertained by the Commissioners
to be due to the said John Creed on foot of incumbrances
affecting the estate of the said John Bateman, and by the
said Commissioners authorized to be retained by the
said John Creed in part discharge of the purchase money
of £5000 for which he has purchased the hereditaments
hereinafter mentioned.”

Forms of
certificates.

WE certify that the above-mentioned sum of £1000
was paid into the Bank of Ireland, to the account and
credit above-mentioned, on the day of .

We certify that the above-mentioned sum of £5000
was authorized by the Commissioners to be retained by
the above named John Creed out of monies ascertained
to be due to him in the matter of the above-mentioned
estate.

We certify that the above-mentioned sum of £1000 was paid into the Bank of Ireland to the account and credit above-mentioned, on the day of and that the above-mentioned sum of £4000 was authorized by the Commissioners to be retained by the above-named John Creed out of monies ascertained to be due to him in the matter of the above-mentioned estate, said two sums making together the sum of £5000 sterling.

The foregoing forms of conveyances and directions embrace all cases likely to arise; the only additional remarks necessary as to the forms are, that in the case of *leaseholds*, the recital of the parcels should be in the *precise words* of the lease itself, and then an averment made identifying the old names with the modern description in the rental.

In case the purchaser be an incumbrancer, he should apply for "provisional credit" for his purchase money; this will be granted, upon notice to the parties in Chamber, almost as a matter of course, if there is a fair prospect of *any* sum approaching in amount to the purchase money being due, and likely to be receivable by the purchaser, when the schedule of incumbrances shall have been settled.

The practice in reference to the settlement of the draft conveyance, up to its execution by the Commissioners, may be shortly pointed out.

Practice as to settlement of conveyance.

The draft having been carefully prepared and *wide line* copied on *small brief paper*, on *front pages only*,

should be sent to the solicitor who has the carriage of the sale, for his approval.*

When returned with the approval marked upon it, the purchaser's solicitor should lodge the *same* draft with the Master, together with the Auction Clerk's certificate of the sale, and the Accountant's receipt for the purchase money, or the order for provisional credit.

The Master, having approved of the draft, will return the certificates, and send the draft to the Commissioner in the matter; when the Commissioner has approved of it, it will be sent by his Examiner to the General Clerk's office, where the purchaser's solicitor should procure an attested copy, from which the engrossment is to be made.

Engross-
ment of con-
veyance.

The engrossment should be on *one* skin, if practicable, with the certificate of payment *on the face* of the deed, rather than by endorsement; if the deed cannot be comprised in one skin, it should be engrossed bookwise.

The deed, with the memorial, having been engrossed, with a map annexed, if desired by the purchaser, they should be sent to the solicitor having the carriage of the sale, to have his approval marked on the engrossment, which having been procured, the Commissioner's Examiner will compare the deed with the original draft settled by the Master and Commissioner, and mark his approval upon the engrossment and map.

* The solicitor having the carriage of the order for sale is not entitled to a fee from the purchaser for approving of the draft conveyance; he will be entitled to charge a fee of £1 1s. in his costs in the matter, provided that the Commissioner finds the draft properly examined and corrected, in which case he will mark in the fold of the draft, "allow costs."

An unstamped engrossment of the deed will be required upon *large ruled paper*, to lodge with the parchment deed, memorial, rental, and certificates of sale and lodgment of money, in the Secretary's back office, the day before the Commissioners fix for execution of deeds, where the deed and memorial will be entered, sealed, and signed by the Secretary, and on the following morning the rental and certificates will be returned and the deed executed.

The conveyance having been duly executed, upon its production, together with the rental, to the Master, he will give an order to have the leases and other documents stated in the rental, and to which he may be entitled, handed over to the purchaser.

If there be a receiver in the Court of Chancery over the property, it is the duty of the solicitor having the carriage of the proceedings to obtain an order for his removal.

Removal of receiver.

This is done by getting a certificate of the conveyance having been executed, from the Secretary, upon which the Commissioners' certificate of the sale will be made out in the office, and upon the production of it in the Registrar's office of the Court of Chancery, a *side-bar rule* will be made discharging the receiver under a General Order of the Court of Chancery, dated 18th June, 1850.

Practice.

The purchaser will be also entitled to get an order for an injunction to put him in possession of such part of the property purchased, as shall be stated to be "unoccupied," or in the owner's hands, or in the

Injunction to put purchaser in possession.

hands of tenants whose tenancy expired on the sale (Chancery tenants); but the Commissioners will, if necessary (under the 18th General Rule), decide upon the relative rights of the purchaser and the prior possessor, with respect to crops on the lands.

Where the injunction is *necessary*, the Commissioners usually allow the purchaser £5 for the costs of obtaining it, and procuring its execution by the sheriff.

In respect to the *effect* of the conveyance, and to see what it passes, and what rights are saved, the 27th and 28th sections may be referred to. The first provides:—

Effect of
conveyance.

That every conveyance, executed by the Commissioners, shall be effectual to pass the fee-simple and inheritance of the land thereby expressed to be conveyed, subject to such tenancies, leases, and under-leases as shall be expressed or referred to therein, but, *save as aforesaid* and as *after provided*, discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whomsoever; and every such conveyance or assignment, executed by the Commissioners upon the sale of a lease in perpetuity or other lease, shall be effectual to pass the estate created or agreed to be created by such lease and then remaining unexpired, subject to the rent and covenants annexed to the reversion expectant on the determination of such lease, and to such tenancies, leases, and under-leases as shall be expressed or referred to in such conveyance or assignment, but, *save as aforesaid* and as *after provided*, discharged from all rights, titles, charges, and incumbrances whatsoever affecting the leasehold estate or interest: provided that where any land or lease, or part thereof, shall be sold or conveyed and assigned, subject to any annual charge or apportioned part thereof; such annual charge or such apportioned part thereof only (as the case may be) shall remain and be charged on and payable out of such land or lease, or part thereof, as in the conveyance or assignment shall be expressed.

And the 28th section enacts :—

That any such conveyance or assignment shall not prejudice or **Rights saved** affect any right of common, or any right of way or other easement, or any rent-charge in lieu of tithes, crown-rent, or quit-rent, charged upon or issuing out of any land, or any charge made by virtue of an Act passed in the sixth year of her Majesty, intituled *An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in connexion with such Drainage in Ireland*, and the Acts amending the same, or by virtue of an Act passed in the tenth year of her Majesty, intituled *An Act to facilitate the Improvement of Landed Property in Ireland*, save where the Commissioners shall think fit to redeem the crown-rent or quit-rents, or to pay off or redeem the charges under the said Acts or either of them, and shall express in such conveyance or assignment that the land conveyed or assigned thereby is so conveyed or assigned discharged of all crown-rents or quit-rents, or charges under the said Acts or either of them, as the case may be, and in such case such land shall be so discharged accordingly.

By the late Act, 16 and 17 Vict., chap. 64, sect. 5, it will be seen that where the conveyance is made subject to a lease, it shall not be necessary in pleading to allege prior title to the reversion.

In the cases of *Rutledge v. Hood*, 5 I. Jur., 59, the **Rutledge v. Hood.** Court of Exchequer have decided that a Court of Law has no power to review the decision of the Commissioners respecting lands which they decided to be incumbered within the meaning of the Act, and which by virtue of that decision were sold and conveyed to the purchaser.

There is nothing in the Act, however, to interfere with the jurisdiction of the Court of Chancery in considering

any question affecting the conveyance on the ground of fraud or notice, or any other equitable ground of relief.

—*Locke v. Ashe*, 4 I. Jur., 180, R.

Leases to be
delivered to
purchasers.

The purchaser will be entitled to the counterparts of leases, and possession of lands not in tenants' occupation, under 29th section, which provides:—

That the Commissioners shall have power to order the delivery to the purchaser, or as he shall direct, of all leases or counterparts of leases and agreements, and other evidences of the tenancies, subject to which the sale shall be made, affecting the land or lease, or part thereof, sold, and shall, on the application of any purchaser, issue an order to the Sheriff to put such purchaser in possession of all lands not in the occupation of lessees, under-lessees, or tenants subject to whose leases, under-leases, or tenancies the sale shall have been made, and who shall have attorned to such purchaser within a time to be limited in such order, and such order shall be executed by the Sheriff in like manner as a writ for the delivery of possession.

The 20th General Rule has a direction as to the purchaser's right to get the leases or other evidences of title, and he will be justified in requiring the originals, counterparts, or copies of such as are stated in the rental under which he purchased.

The 49th section as to conveyances provides:—

That every conveyance and assignment respectively executed as required by the Act, shall for all purposes be *conclusive evidence* that every application, proceeding, consent, and Act whatsoever which ought to have been made, given, and done previously to the execution of such conveyance or assignment has been made, given, and done by the persons authorized to make, give, and do the same; and no such conveyance or assignment shall be impeached by reason of any informality therein.

By the latter part of the 29th section it will be seen, ^{Attornment by tenant.} that unless the tenants attorn to the purchaser he will be entitled to get an order directing such of them as refuse to execute the attornment, to do so within a time to be limited, or in default that they will be dispossessed. By the 19th General Rule it is directed :—

That the Commissioners, whenever they shall think fit, may dispense with the personal service of notice upon any of the tenants to the lands who may be required to attorn, and may direct that such notice shall be given to such tenants, either by posting the same on some conspicuous place on or near the lands, or by advertising the same in one or more newspapers, or transmitting the same notice through the Post Office, or otherwise, as to the Commissioners shall seem proper.

The attornment in ordinary cases must be at the expense of the purchaser, but where the counterpart of the tenant's lease is lost and cannot be handed to the purchaser, or from any other cause rendering an attornment necessary, the costs will be allowed against the fund.

The following form of the attornment has been used and will be found to answer :—

Memorandum of agreement made and entered into on the day of ^{Form of attornment.}
by A. B. (tenant's name and description) and C. D. (purchaser's name). Whereas by indenture of lease bearing date and executed (recite lease concisely, and if the lease was not made by the owner in the matter recite shortly his title, from the lessor, to the property), and whereas the estate and interest of the said E. F. (owner) in said land have been sold by the Commissioners for Sale of Incumbered Estates in Ireland to the said C. D. and a conveyance of same duly executed, and the said Commissioners have ordered and directed me the said A. B. to attorn and become tenant under the recited lease unto the said C. D. Now I the said A. B. in pursuance

CHAPTER XIII.

COMPENSATION TO PURCHASER.—DISCHARGE FROM PURCHASE.—RIGHT OF PURCHASER TO BE INDEMNIFIED AGAINST CHARGES, TAXES, ETC.*

No decision appears to have been pronounced as to whether the Commissioners have power, *after* the execution of the conveyance, to set aside the Parliamentary Title so conferred ; it has been questioned whether the Court has such jurisdiction.—*In re J. J. Bodkin*, 3 I. Jur., 101.

Upon considering the provisions of the Act relating to the “effect” of the conveyance stated in the last Chapter (secs. 27, 28, and 49), it would certainly appear very questionable whether the conveyance, having been once duly perfected, could be rescinded or set aside ; the 15th section gives the Commissioners jurisdiction to *rescind* or vary any *contract for a sale*, but this could scarcely be held to refer to an *executed* contract.

It would appear, therefore, to be the safest course for the purchaser to apply himself, immediately upon lodging his purchase money, to ascertain if he has, in fact, got what the rental purports to give.

* Applications to be discharged from a purchase or for compensation, are Chamber motions.

Due precaution must be observed by a purchaser ; if there be anything in a rental so ambiguous as to require explanation, he must do so, or take the ambiguous statement at his peril ; but if there be a latent ambiguity, such as instead of suggesting a question to a purchaser, deceives him by a statement calculated to deceive any man of ordinary intelligence, then the purchaser is entitled to compensation.

A person who purchases a property must be supposed to have taken some trouble about it, and not to swallow every observation contained in a rental, without any inquiry or any effort to ascertain its correctness.

The desire of the Commissioners is, that purchasers should be put in possession, by the rental, of everything *material* ; all legal disadvantages should be stated in the rental, a right of way, or anything not tangible to the senses, ought to be so stated ; but as to physical disadvantages. it would be hard to say what these really are.

A consideration of the cases decided by the Court in reference to compensation to purchasers and discharge from the purchase, will best elucidate the practice of the Commissioners on these important subjects, which must be considered *together*.

Misrepresentations in rental.

Where the rental represented that a certain sum had been expended under the Land Improvement Act, but on inquiry at the proper office, at the Custom House, it appeared that no such sum, or a less sum, had been expended, it will be a good ground for claiming compensation.—*In re John M'Loughlin*.

Where, also, the rental describes certain tenants as paying *fixed* rents for *fixed* quantities of land, and the facts were, that these tenants held in rundle (in common) at a bulk yearly rent, it is a good ground for application to be discharged from the purchase. In that case the Commissioners remarked that the men set down as tenants were never liable to distinct rents, and if they held the purchaser to his purchase, they would be doing an injustice to the *tenants* as well as to the purchaser; for how could they direct the Sheriff to put the tenants out of possession, if they did not attorn to the purchaser at rents to which they were not, in fact, liable?—*In re John M' Loughlin.*

Discharge of purchaser. Where rental represents tenants as paying *fixed* rent for fixed quantities of land, for which rents they are not liable, and which quantity they do not possess, the purchaser will be discharged.

Where the rental described a lot to be *unoccupied*, and it appeared that there were tenants upon it, the Court discharged the purchaser, ordering the purchase money to be returned, and allowing 5 per cent. interest, from the time it was lodged, also the costs of the application (measured at £5).—*In re Assignee of Thomas O'Brien, and Assignee of Charlotte M'Brane.*

Where land stated to be unoccupied is in tenant's hands, purchaser will be discharged, and purchase money repaid with interest and costs.

Where an incumbrancer became the purchaser under a mistaken idea that a sum due to him was available to make good his purchase, the Court made an order discharging him from his purchase (without prejudice, however, to the creditors holding him accountable for any loss on a re-sale).—*In re Edward Deane Freeman.*

Where incumbrancer purchased in mistake, he may be discharged without prejudice to his liability for consequences.

A leading case, which occurred in an early stage of the Court, relative to an application by a purchaser to be discharged, appears to have been in the matter of *Charles D. Purcell*. In that case John Robinson applied

Purchaser will be discharged upon showing misrepresentations in rental, through

which he
may have
been induced
to become a
purchaser.

Case of C. D.
Purcell's
Estates.

to be discharged on the grounds of misrepresentation in the rental. The facts in the case were as follows :—

The gross rental of the lot was stated to be £732 16s. and William Garde Browne was named as the tenant; the head-rent was represented to be £409 14s. 5d., and the clear profit rent was set down as £323 1s. 7d.

The rental further stated that the *present* tenant paid £5,800 for the lot about five years since, and had *regularly paid* the rent to the present time; and on these representations Mr. John Robinson purchased the lot at £2,200. The affidavits stated that Mr. Browne was *not* the tenant, but had some time since assigned his interest in the lands to a person named Lucy, a pauper, and that the assignment was registered in the office for registering deeds, previous to the presentation of the petition. It was also stated that Mr. Garde Browne had made this assignment to free himself from all responsibility in the lands; also that he had given notice to the receiver and other parties concerned, that he had assigned the property, and suggested that his name should not be put in the rental, lest any person should be thereby deceived. There was another misrepresentation complained of (though it was not stated in the affidavit). The rental set out that the rent had been *regularly paid*; such, it was alleged, was not the fact, the last November gale being about five months in arrear. The head-rent was also in arrear, and there was a notice that the head-landlord would bring an ejectment for what was due to him. There was an affidavit on the other side, stating that it had been mentioned in Court on the day of the sale, that the transfer had taken place. It was also stated, that Mr. Browne's cattle had remained on the land, and that he had, *in fact*, remained in possession since the execution of the conveyance. The case of *Campbell v. Hay* (2nd Molloy's Reports) was referred to, to show that in the Court of Chancery, in a case where a party bringing a property to a sale suppressed the fact that the tenants had applied for a reduction of the rents, an order to rescind the purchase was made.

In re C. D.
Purocell.

On the other side it was submitted, that there was no misrepresentation in the rental; the £5,800 were paid by Mr. Browne for the lands; and his being stated to be the tenant was quite an *immaterial fact*, inasmuch as it was in his power at any time before the sale, or after it, to make an assignment of them. And besides the £5,800 paid for the lands, over £2,000 had been expended on them. It was also relied on, that the rent was paid by Mr. Browne up to the last period that rent was demanded of him. The rental was made out in April, and up to that time one gale was paid within the other. Lucy, the person to whom the land had been assigned, was in the employment of Mr. Browne. No notice had been given that the rental would be impugned on the ground that *the rents were not paid regularly*.

Commissioners' remarks upon the discharging of purchaser.

In giving judgment Mr. Commissioner Longfield said, that a principle of some importance was mixed up with the present question. There was nothing that the Commissioners were more particular about than that great care should be taken in the making up of a rental. It was of the greatest consequence that nothing calculated to lead the public to an erroneous impression respecting property for sale should be put in a rental. Any misrepresentation *materially* calculated to make a purchaser give more than he otherwise would, would cause the Court to let the buyer out of his bargain, and give him the costs of his motion for the rescinding of the sale. The Commissioners would adopt a similar course in the case of even an *immaterial representation*, if they believed it to be made *fraudulently*. Two things they required; everything *material* to be perfectly *true*; everything *immaterial* to be *morally true*. But the present case did not, in his opinion, come under either class of misrepresentations. In preparing a property for sale,

In re C. D.
Purcell.

they found as accurately as possible what the tenancies were; but the Act of Parliament did not give them the power of perpetuating tenancies. Here Mr. Browne purchased the lands for £5,800, and it was competent for him to assign them to another party at any time. The Court should suppose that every purchaser had some knowledge of the law, and the purchasers would draw their own conclusion from facts laid before them. Mr. Browne was stated to be the tenant, and there was nothing to show him (Commissioner Longfield) that Mr. Browne did not appear to the gentleman having the management of the sale to be the tenant. Tenants were constantly changing and dividing tenancies, and no wrong could be done to the purchaser, *even supposing the name of the tenant was incorrectly stated*. The Court did not guarantee that the same tenants would remain; but what they did guarantee was, that *no greater interest than that stated in the rental would be set up against the purchaser*. Mr. Browne might have made an assignment of his interest the day after the sale as well as he could the day before it; and Mr. Robinson or any other gentleman purchasing might know that the tenant would not stay one day longer than he found it his interest to do so. The Court could not guarantee the continuance of a tenant who had come in by assignment. The allegation as to the irregular payment of the rent had not been regularly brought before the Court.

The motion was accordingly refused with costs.

Counsel for Mr. John Robinson obtained leave to appeal to the Privy Council from the Commissioner's

decision on this motion; however the appeal was not necessary, as the application was again brought forward on the ground that the alleged regular payment of the rent was untrue, and a misrepresentation in the rental. Upon this application the purchaser was discharged, and the observations of the Commissioners are very important on this subject.

In re C. D.
Purcell.

Baron Richards said, "The Commissioners wished it to be distinctly understood that they did not mean to guarantee the strict correctness of the rental with respect to the *names of particular parties returned as tenants*. It would be utterly impossible for the Court to guarantee that A. B. or C. D. were the parties in actual occupation of the particular holdings described in the rental. What the Commissioners did undertake to say was, *what particular kind of lease or other holding was outstanding against the estate*. They very frequently stated who the lessees were; but whether those lessees had assigned their interest or not, or whether the particular parties named were those in actual and positive occupation, was a matter to which the Court did not pledge themselves. It would be out of their power to do so; and if they attempted to do so the result would be the setting aside of almost every sale that the commission would effect. Therefore it was not to be supposed that the sale in this instance was to be set aside because of Mr. Browne's name or that of any other person appearing in the rental as tenant in possession. He considered that, taking it altogether, there was important misrepresentation in the rental. Mr. Browne was stated to represent a valuable

Baron Rich-
ard's re-
marks.

In re C. D.
urcell.

interest; and in proof of this it was mentioned that he had purchased it for £5,800. This made the mention of Mr. Browne material, when the further allegations, that he was the continuous tenant, *and had paid the rent regularly*, were taken into consideration. So that taking the statement as a whole he could not but think that it contained misrepresentation. What was the state of facts? He was not at all satisfied that the rent had been regularly paid. The statement was not that it was paid in the way other rents were paid, but '*regularly paid.*' He doubted whether, with a rent of £732 16s. reserved, and with so heavy a head-rent as £400—he doubted, he said, under these circumstances, if a tenant who owed his November rent in April could be said to pay his rent regularly. If the rental said that the tenant who had paid the £5,800 was not in possession, but, because he was apprehensive of being called on to pay a rent that the land was not worth, had assigned his interest to Lucy, would not this state of facts have appeared inconsistent with such representations as the rental made? It might be said that the seller in this Court was not bound to call the attention of parties disposed to purchase to the fact that the tenant had assigned his interest for the purpose of avoiding the responsibility to which his tenancy would make him liable. He was quite aware that the seller was not bound to go this length; but, on the other hand, this party was not justified in *concealing the fact of an assignment, if he knew that an assignment had taken place.* He need not have asserted that there was not another tenant; because the

assertion that Mr. Browne continued the tenant negatived In re C. D. Purcell. the assertion that he had assigned his interest as tenant to another person. If the rental said that Mr. Browne was not now the tenant, having assigned his interest to Lucy, surely the purchaser would have asked who this Lucy was. This was not like the case of a lot, the rent of which was paid by several different tenants; because the entire amount was payable by one. It was ridiculous, then, to say that an intending purchaser would not say in inquiry, 'If the tenant were a shoe-boy, or some domestic servant of Mr. Browne, surely this is not worth what is paid for it, or Mr. Browne would not have assigned it?' He thought that the principle was this, when a man took upon himself, in his dealings with another, to make representations *on the faith of which the latter entered into a bargain*, the first party was bound to make good his representations. He must be answerable for the consequences if he failed to make good the representations *on which the contract was based*. On the whole, then, he considered that there were representations contained in the rental not consistent with the real facts of the case; and that therefore the purchaser should be declared discharged of his purchase. He wished it to be distinctly understood that he had not arrived at this conclusion because *any particular name* was mentioned in the rental; but because, taking the description of the lot as a whole, he thought that description was not a fair and *bonâ fide* representation of the true facts of the case."

Mr. Commissioner Longfield thought that the Court Longfield, C.

In re C. D.
Purcell.

might discharge the purchaser without injury to the estate, or without laying down any principle, the carrying out of which would be impracticable. When this case was before the Court on the former occasion he stated, that as regarded the contents of rentals this Court would require that every material fact should be strictly true—that no allegation of ignorance on the part of persons making out a rental would be taken as an excuse for any material misstatement. He likewise observed that immaterial facts should be morally true—that no degree of immateriality would excuse *wilful* misstatement. But he thought there was no *mala fides* here. He thought that the gentleman preparing the rental might have considered Mr. Browne as the actual tenant. For what was the fact?—a notice under this Court was served upon Mr. Browne treating him as tenant; Mr. Browne returned an answer, acknowledging the receipt of this notice, but not saying one word about his having assigned his interest. Now, considering what might be expected from a gentleman who had assigned his interest as tenant, when acknowledging the receipt of a notice in which he was treated as tenant, he (the learned Commissioner) thought that Mr. Browne's reply was not such as would induce the solicitor to think that he meant to carry out any assignment that he might have made. Generally speaking, it was not material to know who the tenant was; for in case the tenant did not attorn, the remedy, according to the Act, was to put him out. The remedy given was not by keeping tenants to their leases, but by putting them out, if they did not at-

torn according to the lease. The learned Commissioner then referred to the 13th General Rule, to show what the Commissioners required to be done by the party preparing a rental, and continued to say that *the nature of the tenancies*, and not the *names* of the tenants, was the material fact. However, they had the words, "by whom the above rent has been regularly paid." He could not think that this rent had been regularly paid; and regularity was a material fact. This statement was not attributable to any fault on the part of the solicitor, but, at the same time, the real fact as to the rent due would have depreciated the sale if any one had stated it. He had some doubt, though, as to whether the statement the rental did contain with reference to the payment had any weight with Mr. Robinson. Considering that no harm would be thereby done to the estate, and that no impracticable principle need be laid down, the Court would let Mr. Robinson off his purchase without costs of the former motion. There was nothing about which the Court were more anxious than that purchasers should not be deceived; they often had to strike out flaming descriptions of property, lest these descriptions might deceive the public. Parties complained of this; and said—"Oh, you are not puffing this off to advantage—you are not doing as Mr. Robins would do." However, he (Commissioner Longfield) reminded them that this Court *were bound to make good their statements*. He was not, in coming to the decision to which he arrived, in any manner influenced by the case of *Campbell v. Hay*, (2nd Molloy's Reports), cited on the former day; for if the

In re C. D.
Purcell.

In re C. D.
Purcell.

Commissioners were guided by this case they would never sell a property. It was said that a purchaser should be discharged from his purchase because the fact of some tenants having applied for a reduction of their rents was not stated in the rental. Why, on this principle the Commissioners would be expected to say, in the case of some estates—"This property is situated in a desperate part of the county of Tipperary; the people about are very lawless, and the roads are very bad; several murders have been lately perpetrated in the vicinity." It was enough that the Commissioners should see that nothing *material* was kept back; and that even immaterial statements were morally true. In conclusion, Mr. Commissioner Longfield mentioned, that the solicitor having the carriage had pressed him to adjourn the sale, and not declare Mr. Robinson the purchaser; and that it was at the inheritor's instance the lot was sold to the gentleman who now applied to be discharged from the purchase.

Hargrave, C.

Mr. Commissioner Hargrave said, that when this case first came before his brother Longfield and himself, the fact of the irregularity of payment by the tenant was not brought regularly before them. It did not appear in the affidavit, and they declined to give any opinion on it then. He could not but think that the phrase, "by whom the above rent has been regularly paid," would be understood as drawing a distinction between the ordinary payment, to which counsel in the course of the argument had alluded, and the payment of the tenant in this case. He could not consider that the payment here was regular, seeing that very nearly a year was due,

and that the head-rent was so heavy. He was of opinion that the value of a property such as this very much depended on the way in which the rent was paid. Considering that purchasers depended so much on what was stated in rentals, he would scarcely require an affidavit stating that a representation as to the rent being regularly paid had induced a purchaser to give more for a property than he otherwise would.

In re C. D. Purcell.

The motion was then granted with costs. No costs against the applicant in the former motion, and the petitioner to have his costs of both motions as costs in the matter.

The judgments in the foregoing case contain so clear an exposition of the grounds upon which a purchaser will be discharged, in consequence of a misrepresentation in the rental, and show what amount of misrepresentation will entitle a party to be discharged, that it was considered desirable to state them in full. There have been a number of more recent decisions, to which attention will be directed upon the subjects both of the discharge of and compensation to purchasers.

In an application to set aside the sale in consequence of a deficiency in the amount of land as compared to the quantity described in the rental, the deficiency must be distinctly proved; and the sale will not be set aside because tenants are described as holding from year to year, and in joint tenancy, when they actually hold in severalty under leases, if they have been regularly served with the notices under the 13th General Order.—*In re J. J. Bodkin*, 3 I. Jur., 101.

In re Bodkin

In such a case the tenant's lease is evicted, and both he and the purchaser are bound by the description in the conveyance.—*Id. Ib.*

Where the tenants suffer any damage owing to the operation of the conveyance, the Court, on *their* application, will award compensation; for they then deal not with the lands but with the money.—*Id. Ib.*

In re Jessop. An estate so situated that its value would be considerably increased or deteriorated by the death of certain parties; the rental stated that 12 acres, part of the demesne, were not part of the property sold under this Court, but were held under a lease which terminated with the present sale; and it afterwards appeared that these 12 acres included the front lodge, and principal if not the only practicable means of entry into the demesne. Mr. P. became the purchaser, in August, 1850; Held, on an application by him (in February 1851) to be discharged from the purchase, that his default in non-payment of the purchase money, and also his delay in making the application, had disqualified him from the indulgence he sought.—*In re Jessop*, 3 I. Jur., 223; affirmed, 3 I. Jur., 385.

In re Clare. Where the rental contains misdescriptions of certain facts, which do not, however, interfere with the enjoyment of the estate, the Court will not release a purchaser, but will refer it to the Commissioner in Chamber, or to the Master, to inquire and award adequate compensation.—*In re B. Clare*, 3 I. Jur., 367.

In re Carcw. The vendors contracted to give the purchaser a perpetuity of certain lands held on lease for lives renewable

for ever; the purchaser paid his purchase money the day after the sale, and called for the perpetuity, which had not been then, nor even at the date of the motion, procured. A few days after the premises were accidentally destroyed by fire. Held, on an application by the purchaser to be discharged from his purchase, that the vendors not having given what they had professed to sell—a perpetuity—the contract was not fully completed, and that taking the circumstances of the case into consideration, the purchaser ought to be discharged.—*In re W. J. Carew*, 3 I. Jur., 233.

Where it appeared by the rental that the lot sold contained 364 acres, but that there were 10 acres of that quantity under water, the purchaser was declared to be entitled to compensation, and it was referred to the Master to measure the amount.—*In re J. N. Blake*.

So, also, where the rental describes the property to be liable to £1 9s. by the rent-charge, and it turns out to be in fact liable to £19 5s. 9d., the purchaser was held to be entitled to compensation.—*Id. Ib.*

If nothing be stated in the rental about the tithe rent-charge, the purchaser would not be entitled to compensation by reason of his having to pay rent-charge, because, where the rental does not state that the land is *free* from tithe rent-charge, purchasers must understand that they are purchasing subject to it.—*Id. Ib.*

Where an abatement of 25 per cent. had been made to tenants, upon a property over which there had been a receiver under the Court of Chancery, in pursuance of a Master's report finding that it would be for the

benefit of the parties to make such abatement "until further order," and the rental under which the property was sold treated the tenants as paying the original rent without noticing the abatement, the purchaser was discharged from his purchase.—*In re John Knox*.

In re Kirwan

Where the true circumstances of the property can be collected from description in the rental, or where they are sufficient to provoke inquiry, the purchase will not be set aside for misdescription of the premises.—*In re Kirwan*, 3 I. Jur., 66.

The Commissioners will not be guided by the decision in the case of *Spinner v. Walsh*, 10 I. E. R., 386; on appeal, 11 I. E. R., 597.—*Id. Ib.*

In re M'Loughlin.

The purchaser of one lot of a leasehold estate, which is to be indemnified against the head-rent by a covenant from the purchaser of another lot, is entitled to be discharged from his purchase, if it appear that the lot out of which he is to be indemnified is inadequate for that purpose; and there can be waiver of such right by lapse of time, until the facts are ascertained, where there is fraudulent misrepresentation in the rental.—*In re M'Loughlin* in the Privy Council, reversing the decision of the Commissioners.

As to the charges to which land is liable, and against which a purchaser is entitled to be indemnified, it may be stated as a General Rule, that the purchaser is entitled to get the land free from all arrears of taxes, such as quit-rent, rent-charge, poor-rates, county-cess, and head-rent, where it is payable, and all other charges not specified or noticed in the rental.

There are, however, charges incident to land which are known as a general liability upon land, and for which a purchaser is not entitled to compensation.

A charge for the arrears of labour-rate, created by *In re Robins*. 10th & 11th Vict., c. 87, is not a charge or incumbrance within the meaning of the 27th Section of the Incumbered Estates Act. Lands sold in the Incumbered Estates Court remain liable to such a charge, in the hands of a purchaser.—*In re Jos. Robins*, 4 I. Jur., 145, I. C. P. C.

And so as to poor's-rates, though made previously to purchase.—*M'Cook v. Concanon*, *Lally v. Concanon*, Q. B., Easter Term, 1853.

All persons coming in to purchase in this Court must make their own inquiries as to the liabilities of the land they intend to buy, in regard to tax or cess, such as the labour-rate, and make their calculations accordingly.—*In re Robins*, per Baron Richards, C.C.

A purchaser is entitled to notice of a charge due or accruing for arterial drainage, under the statute of 5 & 6 Vic., c. 89, even though the award of the Board of Works has not been made previously to the purchase; if the rental does not state the existence of such a charge, and if the purchaser cannot be fixed with notice *aliunde*, he will be entitled to compensation.—*In re M. A. Mitchell*, I. C. P. C., 24th Oct., 1853, overruling decision of the Commissioners of 11th May.

CHAPTER XIV.

TITLE.—SEARCHES.—SUPPLEMENTAL STATEMENT.—TITLE TO INCUMBRANCES.—THE SCHEDULE OF INCUMBRANCES.—DIRECTIONS.—APPLICATION OF PURCHASE MONEY.—WHERE THERE IS A SURPLUS.—APPOINTMENT OF TRUSTEES.—WHERE FUNDS DEFICIENT.—APPLICATION OF PROCEEDS OF SALE, WHERE REPORT AND FINAL DECREE IN EQUITY SUIT.—OBJECTIONS TO SCHEDULE.—ALLOCATION OF FUNDS.—PAYMENT OF MONEY INTO COURT OF CHANCERY.

A CONSIDERABLE interval will elapse between the time when the Commissioners' directions for searches will have been given (previously to obtaining the order referring the rental to the Master for settlement), and advertising the sale and the day of the sale, during which the solicitor having the carriage of the proceedings, should bespeak the searches.

When searches directed. To be examined by solicitor. Suggestions for alterations of searches directed, may

It will be necessary carefully to examine the searches directed, with a view to see if any of them can be dispensed with, so as to save expense. The solicitor should, himself, have accurately noted the statement of title, and by referring to his notes, and comparing them with the directions for the searches, he may be enabled to

suggest some alterations in them, by which expense will be saved or lessened; and he will also be enabled to answer the queries upon the directions, or see what steps may be necessary to explain the matter pointed out, and have the queries struck off. The proceeding here referred to requires no notice to the parties; it rests between the solicitor and the Commissioner, or his Examiner.

be made to
Commission-
ers.

In cases where it will be found that searches, which would answer the directions given, have been already procured, and are in the solicitor's possession, or have been lodged by some of the parties, if they do not precisely meet the directions, the Examiner's attention might be called to the discrepancy, and he may be satisfied with those already made; however, if no material expense can be avoided, and it is therefore unnecessary to make any application to have the directions re-considered, the solicitor should, without delay, bespeak the searches, and in doing so, the directions should be *critically observed*, as in a future stage of the proceedings the slightest inaccuracy may render further searches necessary, and the allocation of the funds will be delayed.

Where
searches al-
ready made.

There will be little difficulty in filling up the requisition for the searches directed to be made, in the office for the registration of *judgments*, &c. In fact, the form to meet the directions will be given filled up by the Commissioner, and from the delay in getting this search, it should be lodged in the office at the earliest possible period.

Judgment
searches.

The registry search for *acts* will require much atten-

Registry
search.

tion, as the expense of it is large, often amounting to from £10 to £100, and sometimes more: the requisition for this search should be very carefully prepared, so as to *comply* with the Commissioners' directions, and not to *exceed* them, which, by want of proper caution, it might do.

Where a search is directed from one year to another, without naming the months, the earliest and latest period for its commencement and ending should be given. It would be convenient to make a list of the registry searches directed, and see to what extent the solicitor has already procured them, or what searches lodged by other parties can be made available, so as to ascertain what will be required. If the list be made on a sheet of paper, thus:—

“Searches directed,” “Searches made,”

and each search directed, paragraphed separately, it will facilitate the examination of the searches already made, and show the discrepancies between them and those directed, and also show the further searches required; and in preparing the requisition, care should be taken not to bespeak any searches in full, as directed, where a portion is already forthcoming.

Deeds to be
excepted.

The requisition should carefully except all the deeds which appear upon the abstract of title, and any other deeds, or leases, or memorials *of which the solicitor has copies*: in this way unnecessary expense may be avoided. Care, however, should be taken not to except any acts which would not appear on the search if unexcepted, as expense is frequently incurred in explaining

deeds which do not affect the premises at all, and would not appear if they were not excepted in the requisition.

Deeds executed by an owner as trustee of another person's estate, would not appear on the search, and, of course, should not be excepted; and deeds affecting lands *not sold*, should not be excepted, as it is manifest that they cannot appear on the searches.

The Commissioners generally direct the negative registry search against *names only*; and in preparing the requisition, unless this is attended to, the expense of the search will be more than doubled, and it will take twice as much time in being made.

The following form will explain the mistake that is frequently made by the omission of the words in italic, and which should be guarded against.

“I desire to have a negative registry search for any acts by A. B., from the 1st January, 1800, to the 31st December, 1850, to affect the lands of [state them by their old and more modern names as they appear in the deeds] situate in the parish of , and barony of , and county of ; and *I require this search to be made on names only.*”

Form of requisition for negative registry search.

The Commissioner will not usually examine the draft requisition; but if any question arises upon it, it might be prudent to submit it to him or his Examiner. A copy of the directions for the search, and the draft requisition should be shown to the solicitors for the principal parties interested, as it will be an object to all parties, not only to lessen the expense, but to see that the directions are carefully complied with; for, when the search has

Settlement of draft requisition.

been made, if any error be found in the requisition, further searches may be required, and the allocation of the purchase money delayed for weeks or months.

Where the incumbrancers have made settlements or assignments, or mortgages of their incumbrances, the deeds by which they have done so can be excepted, if forthcoming; but the solicitor will require to get copies to abstract, as it will be necessary to submit them to the Commissioner when he is examining the searches.

Examina-
tion of
searches.

When the search for judgments and the registry search shall have been made, they should be minutely examined. Personal searches will probably become necessary as to the judgments, to see the descriptions of the parties—which are not often given in the search—and to ascertain if judgments which appear have been satisfied on record, which will not be generally shown by the search; and, as to the registry search, to examine any new acts that seem to relate to the lands, and attested copies of the memorials (if any such) will be required.

Personal
search.

A personal search will be necessary in the General Clerk's office of the Court, in the books which contain the entries of claims; and attested copies of *every* claim which has been filed must be taken out. It will be also necessary to get "*a certificate of appearances and claims filed.*" The printed form will be got at any of the law stationers, and the solicitor will have to insert in it the name of every party who has entered an appearance, or filed a claim. This will be checked and signed by the

proper officers, and it will be required on settling the schedule.

Having examined the judgments and memorials, and the several claims filed, the draft schedule of incumbrances can be prepared. A printed form can be had at any of the law stationers. The first item in the draft should be the petitioner's costs and costs of sale, which may be left in blank until ascertained, as after pointed out, and the several incumbrances appearing in the schedule to the petition should be then copied into the draft according to their priority, and any further incumbrances which appear upon the searches should be added or placed in their proper priority, as also all the claims filed should be taken from the attested copies, and it would be useful to bring forward, into the draft schedule, the name and *address* of the solicitor for the claimant, or of the claimant if he has no solicitor. It should be remarked that although it be clear that the purchase money will not reach beyond the few first incumbrances, *all* the incumbrances and claimants, no matter how numerous, should be placed in the draft schedule.

Draft schedule of incumbrances.

All incumbrances and claimants should appear in draft, even though fund deficient.

Where judgments appear on the searches against *any* of the parties against whom they have been directed, the record should be looked to, to ascertain if they are satisfied or assigned; and in the latter case, the assignee's name and *address* should be extracted. And although there is no column in the form of the schedule for the *address* of the claimant, it will be found useful to put his address, and his solicitor's, in the column for observations;

Searching judgment rolls.

it will facilitate the filling up of the requisite notices of the draft schedule.

Title to the
incum-
brances.

Having prepared the draft schedule from the several documents pointed out, it may be necessary to prepare a supplemental statement of title to the *incumbrances* which appear on the searches, unless the title to them has been shown in the abstract of title to the *estate*: if not, a regular statement will be requisite, showing the creation of the incumbrance, and the deeds through which it has passed to the party, to whom it is to be paid out of the proceeds of the sale; and such further deeds as may appear on the search, or have been procured, as already suggested, from the solicitors for the parties, should be carefully examined and abstracted.

Deeds show-
ing title
should be
procured
and ab-
stracted.

The following are the latest directions and instructions of the Commissioners in reference to the draft schedule of incumbrances, and were published in November, 1851.

THE SCHEDULE OF INCUMBRANCES.

Commission-
ers' direc-
tions as to
schedule of
incum-
brances.

In order to prepare the draft schedule the solicitor should attend the Commissioner's Examiner with a copy of the petition, the order for sale, the rental, any orders, decrees or reports relating to the estate, the searches, with the Commissioners' directions for searches, and any documents relied on for the purpose of explaining them.

He should also be prepared with a statement (which he must verify by affidavit, if required by the Commissioner) showing how all the acts excepted in the requisition for search, or appearing on the search, are disposed

of, and in general it will be necessary to have a copy of the memorial of all acts which he cannot fully explain. This statement should also extend to the searches for judgment. It may be in the following form :—

EXCEPTED DEEDS.

Explanation
of registry
search.

31 Jan., 1787.	This deed is in the Abstract.
9 Oct., 1790.	This is an expired Lease.
7 Jan., 1801.	This is a Mortgage which was paid off in the cause of <i>Evans v. Brett</i> . See Allocation Report and Order.
8 June, 1812.	This is a dealing with a tenant's interest in which the landlord joined, and was excepted as it appears in an old common search.— <i>See Memorial.</i>
9 Jan. 1807.	This is a Mortgage, and is now vested in Petitioner.

RETURNED DEEDS.

Explanation
of registry
search.

3 Sept., 1763.	This is an old Mortgage, which is presumed to be paid off, as no claim has been made on foot of it, and it is not reported in the cause.
4 July, 1817.	This Mortgage is in the Schedule.
3 June, 1818.	This is a Lease; and the estate has been sold subject to it.

JUDGMENTS.

Explanation
of judgment
search.

1. Against Jeremiah Downing.

None of the judgments returned are against the person searched against. He died in 1818 (see Abstract, p.), and the earliest judgment is 1821.

2. Against John Downing.

This person had never any interest greater than a life estate (see Abstract, p.), and he has died since the petition was presented. (See Affidavit.)

3.—Against Michael Thompson (the owner).

Explanation
of judgment
search.

Hil., 1789.	Not the same person. The owner was not of age until 1818. (See Abstract, p. .)
Trin. 1819.	Believed not to be the same person. Conuzor is described as a farmer. The owner is a physician.
Mich., 1820.	The Conuzor having no description, petitioner's solicitor does not know whether it is the same person. The judgment was assigned in 1837 to J. S., who redocketed same.
Hil., 1821.	This is a recognizance for a tenant under the Court. It is presumed from the dates that nothing is due on it.
Hil., 1832.	Crown bond as surety for John Stokes, postmaster of Ballymoran. Petitioner is informed that no person of that name is now postmaster.
Trin., 1835.	The Conuzor became tenant for life of the lands sold in 1835. (See Abstract, p. .) This judgment is in Schedule as a charge affecting the life estate.

4. Against Martha Downing.

This person was a married woman up to 1843. Since that date the following judgments appear against this name :—

Explanation
of judgment
search.

Trin., 1840.	Not the same person, the Conuzor being described as a Spinster.
Hil., 1841.	Petitioner's Solicitor does not know whether this is the same person. The judgment was assigned in 1847 to John Reed, of No. 113, Britain-street, Dublin.
Mich. 1843.	Assigned to John Stokes. A claim has been filed on foot thereof by his administrator.
Hil., 1845.	This judgment is satisfied. See Certificate.

Any judgment or mortgage, or other charge supposed to be paid off or barred, but which would otherwise affect the lands, should be mentioned, with a statement to the effect that—"Nothing is due on foot of this charge." Judgments are to be reported, in the schedule, to the last assignee on the roll, or his representative. For this purpose the statement should show who is the last assignee of every judgment which affects the estate, or which may possibly affect it.

The several documents here pointed out having been prepared, the draft schedule should be lodged with them with the Commissioner's Examiner, who will either examine them himself, or fix a time to go over them with the solicitor.

Questions may arise on the first settlement of the draft schedule, upon which it may become necessary to refer to the Commissioner; in such cases the Examiner will give an appointment for the purpose, and the solicitor must attend with the necessary documents, which are:—

1. The statement of title. [This will be got by the Commissioners' Examiner.]
2. The directions given for the searches.
3. The registry searches.
4. The judgment searches.
5. The supplemental statement, with abstract of all acts appearing on search (not abstracted) affecting lands;
6. Copies or memorials thereof.
7. Copies of all claims filed.
8. Certificate of all claims filed.
9. The explanation of the searches.
10. The certificate of the Paymaster of Civil Services, as to sums due or not for arterial drainage or other Government loans.

The Examiner will see that these documents are correct, and will, in the first instance, examine the negative registry search, and ascertain that it corresponds with the Commissioner's directions; he will then require a full explanation of every deed *excepted*: those abstracted, and therefore excepted, will appear by the

Examination by Commissioner of registry searches.

statement of title, and the copy or memorial of any other excepted deeds will be called for.

The abstracts of memorials disclosed by the search will then be examined, and each instrument appearing to affect the property, or the charges upon it, must be produced and explained.

Of judgment
searches.

The judgment searches will next require to be examined, and it must be shown that all judgments that appear, affecting the parties, are put forward in the draft schedule; in like manner the list of claims filed will be checked, and the Commissioners will correct the draft schedule in any particular that may be found to be necessary, transferring to the fold of it any further matters requiring explanation, or which have not been satisfactorily explained, and he will direct upon whom, in addition to the parties named in the schedule, notice should be given, and in what papers the notice should be advertised.

The portions of the Statute and General Rules relating to the application of the purchase money, and the preparation of the schedule of incumbrances, may be here referred to.

The 30th Section provides :—

Provisions of
Act relating
to applica-
tion of pur-
chase money.
Surplus.

That the Commissioners shall, out of the purchase money, allow and pay such costs of, and consequential on the sale, as they shall think fit, and the expenses incidental to the sale, and that the surplus of the purchase money, after payment of such costs and expenses, shall, under the order of the Commissioners, be applied in or towards payment or satisfaction of the INCUMBRANCES OR CHARGES which affected such land or lease, or part thereof, according to their PRI-

RIGHTS, and shall, subject as aforesaid, be paid to the owner previously to such sale of such land or lease, where such owner was absolutely entitled thereto.

By the late Act, 16 and 17 Vict., chap. 64, the costs of the petitioner for sale are made payable in the same priority only as his incumbrance, unless the Commissioners shall otherwise direct.

In case the owner should *not* be entitled to receive the *surplus*, if any, the 30th Section provides :—

May be paid into Bank.

That the surplus should be laid out in the purchase of land which shall be limited and settled to the same uses, upon the same trusts, for the same purposes, and in the same manner as the land or lease, or part thereof, sold, stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; and until such money can be so laid out it may, under such order as aforesaid, be transferred or *paid over to trustees to be appointed or approved by the Commissioners*, for the purpose of being so laid out as aforesaid, with such power for the investment thereof in Government stocks, funds, or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Commissioners shall think fit.

Where it shall be necessary to pay money into Bank, the 31st Section provides :—

Where money paid into Bank, it may be invested in Funds.

That such money may, by order of the Commissioners, be invested in their name in the purchase of any stocks, funds, or annuities transferable at the Bank of Ireland; and, until the same shall be sold by order of the Commissioners for the purposes of the Act, the dividends thereof shall from time to time be applied, under the order of the Commissioners, in like manner as the rents of the land or lease, or part thereof, from the sale whereof the money invested in such stocks, funds, or annuities has arisen would have been applicable.

Where there are trustees in being, they will be entitled to have the money transferred or paid over to them, but where the trustees or some of them are dead the Commissioners would, it appears, have power, under the 32nd Section, to appoint trustees; that section provides:—

Appoint-
ment of new
trustees.

That whenever the Commissioners shall appoint or shall direct the appointment of trustees for any of the purposes of this Act, it shall be lawful for the Commissioners to make or to direct to be made such provision as they shall think fit for the appointment of new trustees, on any event to be determined by the Commissioners.

It should be observed that Sections 31 and 32 apply *only to the surplus* purchase money, after payment of all demands.

Where funds
deficient.

When the proceeds of the sale are *deficient* to pay all incumbrances in *full*, the 33rd Section enacts:—

No payment,
not being in
full, to affect
right of in-
cumbrancer
for balance,
and no pay-
ment in re-
spect of any
incumbrance
to impair re-
medy over.

That no payment towards discharge of what shall be due on any incumbrance or charge, not being payment in full, shall prejudice or affect any right or remedy of the incumbrancer or the person entitled to the charge, in respect of the balance, otherwise than as against the land or lease, or part thereof, sold under this Act; and no payment under this Act, of or in respect of any incumbrance or charge, shall impair any right or equity of any persons out of whose estate such payment shall be made, to be reimbursed or indemnified by any person, or out of any other land or estate, except so far as the Commissioners under any special circumstances shall order.

Application
of proceeds
of sale,
where report
and final
Equity suit.

In cases where there has been a report and final decree in the Court of Chancery, it would appear that the Commissioners are *bound* to distribute the funds

according to the rights and priorities ascertained by the report. The 41st Section provides:—

That where any sale shall be made of any land or lease, or part thereof, in respect of which there shall have been a decree of a Court of Equity, or any proceedings pending in a Court of Equity, the Commissioners *shall*, in distributing such monies, and in their other proceedings, *have regard to the proceedings in such Court*, in relation to the *priorities and rights of incumbrancers* and others; and where there shall have been a decree of a Court of Equity, the Commissioners *shall*, in distributing the monies arising on the sale and in their other proceedings, *proceed upon and be guided by the declarations of, and inquiries and proofs made and taken under such decree, in relation to such priorities and rights as aforesaid*: provided that it shall be lawful for the Commissioners, where it shall appear to them that there is any *clerical error*, or any *error of names*, or in *computation*, or other like error, in such decree, or in any finding or proof, or where, from *matters coming to their knowledge*, it shall appear to them that the Court in which the decree has been made should have an opportunity of *reconsidering* such decree, or considering or reconsidering any finding or proof, to direct such persons as the Commissioners may think fit, to apply to such Court in relation thereto; and such Court may make such order, concerning the matter of such application, as it may think fit.

In the matter of the Estate of *Christopher Kelly*, an application was made on behalf of a creditor to have his demand allowed, though he had not proved in Chancery. The report and final decree had been made in the Chancery proceedings.

Quære whether Commissioners bound by decree.

Baron Richards stated, that the party should even now apply to be allowed to prove in Chancery, and expressed an opinion, that the circumstance of there having been a decree in Chancery would not exclude the Com-

missioners from granting an application like the present, if good reason were shown in other respects.

Mr. Commissioner Hargreave concurred with Baron Richards; but

Mr. Commissioner Longfield, though concurring in the judgment, expressed a different opinion as to the effect of a decree in Chancery, considering it a bar to the admission of the claim in the Incumbered Estates Court.

The General Rule (27th), relating to the preparation of the schedule, directs :—

Schedule of incumbrances to be prepared by the Commissioners or their officers.

Notice in newspapers and to incumbrancers.

That a schedule of incumbrances shall be prepared by the Commissioners, or one of them, or such of their officers as they shall appoint, according to their several priorities, with the sums due on each for principal, interest, and costs, respectively; and, in case of an annuity, for arrears and costs; and when such schedule shall be filed, notice thereof shall be given in a Dublin newspaper, and in a local newspaper, and such other newspapers as the Commissioners shall direct; and if the Commissioners shall consider it necessary, notice shall also be specially given to the incumbrancers and other parties interested in the premises, or their attorneys; and if no party interested shall file an objection thereto, within such time as the Commissioners shall appoint for that purpose, the same shall stand confirmed without further order, and all parties shall be bound thereby, so far as relates to the money produced by the sale of the premises, in respect of which such schedule shall be made, unless the Commissioners shall, on special application, make an order to the contrary.

It will have been observed that it was not necessary to give any party notice of the original or first settlement of the draft schedule by the Commissioner or his Ex-

aminer, that proceeding being altogether provisional, and being merely analogous to the preparation of a Master's draft report in Chancery, to which it is open to all parties to object.

The Commissioner, however, having settled the draft, or it having been settled by his Examiner, if no reference to the Commissioner became necessary, it will be returned to the solicitor to have two fair wide line copies made, with spaces between each incumbrance for at least half a dozen lines, and these copies will be compared in the Examiner's office with the draft, and the Commissioner's initials will be procured to one copy, which is to be lodged in his office, and the other (which should have a parchment back sheet), must be lodged in the General Clerk's office.

Number of copies of schedule required.

At this stage of the proceeding, it will become necessary to give all parties interested notice of the preparation and lodgment of the draft schedule; the following is the form of notice now necessary:—

FINAL NOTICE TO CLAIMANTS.

In the Matter of the Estate of A. B., Owner, <i>Ex parte</i> C. D., Petitioner.	}	This is to give notice that the Com- missioners have sold the lands of [state lands], in the barony of , and county of , formerly the estate of A. B., and that the <i>draft schedule of incumbrances</i> , formerly affecting the said lands, is now lying in the office of the General Clerk of this Court; and that if any person has any claim not therein inserted, or if he object to the said schedule, either on account of the amount, or the priority of any charge therein mentioned as due to him or to any other person, or	Form of notice.
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because he claims any lien on the purchase money, or for any other reason, he is required to lodge a statement, duly verified, of the particulars of such claim, lien, or objection with the General Clerk of the said Court, on or before the day of , and appear on the following Monday, at the hour of eleven, A. M., before , one of the Commissioners, in his Chambers, when instructions shall be given for the final settlement of the schedule; and take notice that within the time aforesaid any person may file an objection to any demand reported in the said draft schedule.

Dated, &c.

Publication
of notice.

It will be necessary to publish this notice, generally, in one or two Dublin papers, and one or two local papers circulating in the neighbourhood of the property sold; this, however, is regulated according to the extent and value of the property; and the solicitor having the carriage of the proceedings should insert in the fold of the notice the papers he would suggest, and the insertion of it in them will be settled by the Commissioner or his Examiner, who will initial the entry, to justify the publication of the notice, and also the notice itself, which will be then entered in the Registrar's back office, and signed by him.

The following are the Commissioners' directions of November, 1851, as to the parties on whom this notice should be at once served:—

On whom to
be served.

Notice of the draft final schedule is to be given *through the Notice Office* to the following persons:—

1. The owner, and all parties who have appeared.
2. To all persons who have purchased in the matter.
3. To all persons who have filed claims.
4. To all persons mentioned in the draft schedule.

5. To all persons who have lodged documents subject to lien.

6. To all persons appointed to receive monies due under the Drainage and Land Improvement Acts.

7. Notice of the draft must also be given to such persons, and in such manner as the Commissioner, on preparing the same, shall direct; and must be inserted in such newspapers as he shall direct, within *one week* from the preparation of the schedule.

Immediately after the notices are all served the solicitor should prepare the costs of the proceedings; and upon applying to the Commissioner (as a motion *of course*) he will endorse upon the costs an order to the Taxing Officer to tax them; and at the same time direct what party should get notice to attend the taxation. This will enable the solicitor to have his costs ascertained in proper time, and inserted as the first item in the allocation schedule. Upon applying for a reference to tax his costs, the solicitor should be prepared to state what party is *substantially* interested in the taxation. Costs subsequent to the schedule of incumbrances are *post* costs, to provide for which a sum should be set apart.

When and how to get costs of proceedings taxed.

Post costs.

Objections to the schedule can be filed under the 28th General Rule, which is as follows:—

Objections to schedule.

That any party may file an objection to the schedule of incumbrances within the time specified under the last preceding rule, and shall briefly state therein the grounds of his objection, and such objection shall be heard and dealt with by the Commissioners in such manner as they shall think fit.

It may be observed that the party having the carriage

250 *The Schedule of Incumbrances.*

of the proceedings may himself file an objection to the draft schedule, as it is considered the act of the Commissioner, and charges are frequently inserted or omitted (as the case may be) contrary to the wish of the party having the preparation of the schedule.

Notice
should be
given to parties
affected.

Where objections are filed to the schedule of incumbrances notice should be given to the solicitor having the carriage of the proceedings, and also to the solicitor for the parties whose *rights* may be *affected* by the decision to be made upon the objection. The Solicitor having the carriage of the proceedings will, of course, take out copies of all the objections; and it will be necessary to prepare instructions for counsel to attend on the settling of the schedule, as questions of importance may have to be argued relating to the rights and priorities of the parties. In fact the proceeding to settle the schedule *finally* is quite analogous to a hearing in Chancery upon report, merits, and exceptions, and counsel's assistance will be indispensable; and the Commissioners will, in all cases, certify in favour of it.

Counsel's
attendance.

The Commissioners' directions require that evidence of the service of the final notice to claimants on the different persons pointed out shall be laid before the Examiner, as soon as may be, after filing the schedule; and for this purpose the Solicitor having the carriage of the proceedings must produce to the Examiner the following documents:—

Papers necessary on
finally settling
schedule.

1st. A certificate from the General Clerk of all appearances entered by any party, and of all claims, notices of claims, and claims of lien, which have been lodged in the matter.

2nd. A certificate from the Notice Clerk of the due service of the notice of the lodgment of the final schedule.

3rd. The Commissioners' directions for the insertion of the advertisement (*which will appear in the fold of the draft schedule or notice*), and a certificate from the Registrar's office that these advertisements have been duly inserted.

4th. A certificate of all objections filed to the draft schedule, or, if none filed, a certificate to that effect [to be obtained in Registrar's office].

5th. A certificate from the Record Keeper of deeds or documents lodged subject to lien, or that there are no deeds or documents lodged subject to lien (as the case may be).

6th. The certificate from the Auction Clerk of all purchasers in the matter.

7th. The original Final Notice, with the services marked thereon.

These documents will be investigated by the Commissioners' Examiner, some few days before the day appointed for the final settlement of the schedule; the following are the Commissioners' directions of November, 1851, on the subject:—

A period of three days will generally be allowed between the last day for filing objections and the hearing of the schedule. During this period, the Solicitor having the carriage of the proceedings should attend the Commissioners' Examiner with the documents necessary for proving the advertisement and service of the notices, and with a certificate showing what objections have been filed. Any neglect of this precaution may render it necessary to adjourn the settlement of the schedule at the expense of the Solicitor.

Of course it will be necessary to take out copies of all

The hearing on schedule and objections.

objections filed, and to instruct counsel to attend on the hearing, and the objections will then come on for hearing before the Commissioner, who will hear all parties, and decide upon each objection, and either finally settle the schedule, or give further directions respecting the evidence to be given by the parties making claims or objections, and adjourn the final settlement to a future day.

Payment before schedule of incumbrances finally settled.

It will be seen, by the following General Rule (30th) that payments may be made in some instances *before* the schedule of incumbrances is finally settled :—

That the Commissioners may, *before* such schedule, as aforesaid, shall be finally *settled*, upon the application of any person who shall be the first or an early incumbrancer, and whose claim shall appear to be valid, order payment to such incumbrancer of the amount claimed by him, or any part thereof, if it shall appear to the Commissioners that such order may be made with safety to all parties; but the costs of such application shall not be allowed, on taxation, against the fund, unless in the order pronounced by the Commissioners they shall award the costs thereof to such incumbrancer.

In distributing the proceeds of the sales the Commissioners have frequently occasion to decide important points as to the construction and effect of deeds, wills, and other instruments, and upon the Mortgage and Judgment, and other Acts; but it is not necessary here to enter into the consideration of matters not relating to the practice of the Court.

In re Devoeux.

With reference to the practice observed in allocating the funds it should be remarked, that it is the duty of the Solicitor who has the carriage of the proceedings to see that the funds are properly applied, and that none

are drawn out of Court except in conformity with the rules; the Commissioners always look in the first instance to the Solicitors having the carriage of the proceedings, and hold them primarily liable for any irregularity that may occur.—*In re R. J. Devereux*, 4 I Jur., 16.

So where a sum of £500 was lodged to the credit of the matter, and a sum of £33 thereout had been directed to be paid to a third party, and the Solicitor for the Owner permitted the whole of said £500 to be drawn (part of it being received by the Owner) without paying said £33; the Court directed the Owner to pay said sum of £33, and in default, that the Solicitor should make good the same.—*Ib.*

Where funds are realized by a sale in this Court, the mortgagee is not entitled to insist on his common law right to receive six months' notice.—*In re Sir C. R. Leighton*, 4 I. Jur., 35. In re Leighton.

The proceedings in this Court will be considered to constitute such notice.—*Ib.*

Whenever there is a prior undocketed judgment and a mortgage with redocketed judgments intervening, the undocketed judgment must be held void, not only as against the mortgage, but "for its sake," as against the intervening redocketed judgments.—*In re Huthwaite*, 4 I. Jur., 61, I. C. P. C.; 2 I. Ch. R., 54. In re Huthwaite.

The Registry Act and the Redocketing Act are similar in construction, and cases under the one are authorities applicable to cases under the other.—*Ib.* *Latouche v. O'Brien*, 10 I. E. R., 112, overruled; *Beere v. Head*, 9 I. E. R., approved.—*Ib.*

In re Carew. Where a judgment has been entered on record, and redocketed against the connuzor by one only of his two baptismal names, subsequent incumbrancers by deed were held bound, although the judgment had escaped their notice when making searches.—*Hallam's Case in re Carew*, 4 I. Jur., 145., I. C. P. C.

In re Persse. Where the solicitor for the guardian of a minor and ward of Court made advances, and incurred large sums for costs and advances in the matter of the minor, on behalf of minor, under the direction of the Court of Chancery, and obtained an order for the payment thereof by a receiver who had been appointed over the minor's property, and who was not discharged until the estate had been sold in this Court, it was held that he was entitled to be paid such sums out of the produce of the sale, in priority to judgments recovered against the ward after he had attained his age, although such judgments had been registered prior to the registry of the order for payment to him.—*In re Persse*, in the Privy Council, reversing the order of the Commissioners.

Where there is a deficient fund, and parties in equal priority are entitled to it, they will be paid in the first instance sums sufficient to bring the arrears of interest due to each on a par, and then the *interest* will be discharged in full, and the *principal* will be paid with the residue, rateably.—*In re W. D. Persse*, 3 I. Jur., 152.

But in this case the Commissioners intimated, that where the incumbrance has been made the subject of settlement, the deficiency should be borne rateably by the tenant for life entitled to the interest, and the re-

mainder-man claiming the principal. It is said that in Chancery the practice is to pay the interest in full in the first instance.

A Court of Law has no jurisdiction, under Pigot's Act, to make an order charging the residue of a fund, to which the Owner may be entitled, with payment of a judgment.—*Howlett v. Hackett*, 5 I. Jur., 110.

The schedule having been finally settled and signed by the Commissioner, it is part of the Commissioners' directions relative to it :—

Proceedings
after final
settlement.

That any party objecting to it may, within one week, serve a Appeal. notice of appeal, which will be heard by the *Commissioners in Court*; but if no notice of appeal be lodged within the week, the Commissioners will order payment of the money, or transfer of stock, as the case may be, to the several parties, according to their priority.

In case of no appeal against the schedule, within the week allowed, or after the disposal of the appeal, the Commissioners will proceed to allocate the funds under the 29th General Rule, which directs :—

Allocation of
funds.

That after the schedule of incumbrances shall be confirmed, and if the Commissioners shall think the funds may be safely distributed, one of the Commissioners shall allocate the stock and funds in Court (computing the value of the stock at the price of the day of such allocation), among the several incumbrancers and parties entitled, according to their priorities; and such allocation, so far as it may extend, shall be deemed payment of such incumbrances, so that they shall cease to bear interest; and the owner of the incumbrance shall be entitled to the dividends on the stock, and shall be liable to all the consequences of its fall or rise in price; but such Commissioner shall not be bound to make any allocation of stock or funds in part payment of an incumbrance, unless the incumbrancer consents to such allocation.

Allocation
schedule.

The course of proceeding to allocate the funds is to prepare an allocation schedule, which should merely contain the names of the parties to whom stock or cash is to be paid, and the amount of such stock or cash, for which there should be separate columns; where money is ordered to be paid, or stock allocated to trustees, the Commissioners may refuse to order the transfer to them, unless the full number of trustees exist, according to the provisions of the instrument creating the trust (General Rule 31).

Payment of
money.

The Commissioners will sign the allocation schedule when finally settled, and the order for payment, or transfer of money or stock, will be made out in the office, as a matter of course.

Any party to whom funds shall be allocated shall not be entitled to them until he shall have verified his title thereto, as the Commissioners may direct (General Rule 32). The Commissioners have made a by-rule directing :—

Party whose
claim admitted
without
proof shall
verify claim.

That any party whose claim shall be admitted without proof shall verify his claim by affidavit previous to any payment of money or transfer of stock to him. This affidavit must be made by the claimant himself, unless the Commissioners shall permit some other person to verify for him.

Where money to be
paid or stock
transferred
in payment
of legacy,
legacy duty
receipt must
be produced,
or the Com-
missioner

And where any money or stock is to be paid or transferred to a party, in payment of a legacy, the Commissioners will not draw in favour of, or transfer to such party, until he produces a certificate from the proper officer of the payment of the legacy duty (if any), payable in respect thereof; but the Commissioners may, with

the consent of such party, draw in favour of, or transfer to the proper officer authorized to receive same, the amount of the duty (General Rule 33). may transfer to the proper officer the amount.

And the Commissioners may, in any special case, order the payment of money or transfer of stock to any person, upon his giving such security as shall be approved of by the Commissioners, to abide any order which the Commissioners may afterwards make in regard thereto (General Rule 34). Commissioners may order payment to party on giving security.

It may be here convenient to refer to the sections of the Act authorizing the payment of money into the Court of Chancery or Exchequer; they are the 35th and 41st. The 35th Section provides:—

That where any money arising from a sale under the Act is *not immediately distributable*, or the parties entitled thereto cannot be ascertained, or where, from any other cause, the Commissioners think it expedient for the protection of the rights and interests therein, the Commissioners may order such money, or any stocks, funds, or securities in which the same may have been invested under this Act, to be transferred to the account of the Accountant-General of the Court of Chancery or of the Court of Exchequer in *Ireland*, or (where the case may require) of the Court of Chancery in *England*, in the matter of the parties interested in the same, to be described as the Commissioners shall think fit and direct, in trust *to attend the orders of such respective Courts*; and the Commissioners may, by their order, declare the *trust* affecting such money, stocks, funds, or securities, so far as they have ascertained the same, or state (for the information of the respective Court) the facts or matters found by them in relation to the rights and interests therein; and the Court of Chancery, Lord Chancellor, and Master of the Rolls, in *England* and *Ireland* respectively, and the Court of Exchequer in *Ireland*, may make such orders, and give such directions in relation to any such monies, stocks, Power to Commissioners to order money to be paid into Court of Chancery or Exchequer.

funds, or securities as shall be so transferred to the account of the Accountant-General of such respective Court, as such Courts or Judges respectively might make or give in relation to any trust monies, stocks, paid in, transferred, or deposited under the Act passed in the eleventh year of her Majesty "For better securing Trust Funds, and for the Relief of Trustees," or the Act of the last session of Parliament for extending to *Ireland* the said Act of the eleventh year of her Majesty respectively; and no money transferred into the name of the Accountant-General of the Court of Chancery in *Ireland*, or paid out under this provision under any order of the Lord Chancellor or Master of the Rolls, shall be liable to usher's poundage.

And the latter part of the 41st Section provides:—

That the Commissioners may, if they think fit, order all or any part of the purchase money (after payment of the costs and expenses payable thereout under the order of the Commissioners) to be paid into the Court of Equity in which any proceeding may be pending.

Where money ordered to be paid into Court.

Where the Commissioners shall have decided that any portion of the funds is to be paid into Court, pursuant to the foregoing sections, their directions require:—

Notice must be given.

That notice of such intended payment must be given to the same class of persons (see *ante*, p. 248), to whom the notice of the preparation of the draft schedule is directed to be given (except the 4th class, namely, parties mentioned in the schedule), and that such notice shall be signed by the Secretary, and shall be in the following form:—

Form of notice.

IN THE COURT FOR SALE OF INCUMBERED ESTATES IN IRELAND.

Title of Matter.

Take notice, that the Commissioners have sold the lands of (state them), in the barony of , and county of , formerly the estate of , and they are about to pay the clear produce of the sale (or portion of it, as the

case may be), into the Court of _____, to the credit of the cause of _____, and if you have any interest in or claim upon the funds arising from the sale of said lands not represented or provided for in said cause, you are required to lodge a statement duly verified, of your objection to such payment, with the General Clerk of this Court, on or before the _____ day of _____, and appear on the following Monday, at the hour of 11 o'clock, A.M., before _____, one of the Commissioners, in his chambers, when instructions will be given for the disposal of such claim.

Dated, &c.

Referring to the 35th and the portion of the 41st Section above given, it is quite clear that the Commissioners are empowered to pay money into the Court of Chancery, &c. For the purpose of saving expense to the parties, the Commissioners suggested to the Lord Chancellor and Master of the Rolls the propriety of making a side-bar rule to enable the Accountant-General to receive a transfer of funds from this Court to the credit of any particular cause or matter pending in Chancery, but no such rule has been made, so that a *special* application must, in cases of this nature, be made in Chancery, and an order authorizing the transfer obtained.

Mode of transferring money to other Courts.

In reference to the transfer of the proceeds of the sale to the Court of Chancery, and the refusal of that Court to make a side-bar rule on the subject, the following remarks were made by the Commissioners, which may be here usefully given, as they show the course the Commissioners will adopt, and the considerations which will influence them in declining to distribute the funds.

Commissioners' remarks upon transferring money to other Courts.

Baron Richards remarked, "That, *generally speaking*, it was the intention of the Commissioners to distribute the proceeds of the sales themselves. This would be their *general course*; but it was manifest that there must be some cases in which it would be very inexpedient that the Commissioners should take this duty upon themselves, and in which it could not be done without great inconvenience to the suitors. It often happened that *general accounts* were directed by the Court of Chancery, *reserving various points and special equities* for the return of the Master's report. In such and the like cases it would be palpably inconvenient to have questions so reserved, and rights in such a course of adjudication, decided by the Commissioners, and thus to that extent to have the functions of the Lord Chancellor superseded. It also happened that there were estates under the *jurisdiction* of the Court of Chancery, and not within that of the *Commissioners*, which would form a common fund with the proceeds of sales in this Court. The Commissioners would, therefore, in the exercise of the discretion vested in them by the Act, direct, in such cases, that the fund should be transferred to the Court of Chancery or Exchequer, to abide the orders of these Courts respectively; but before making any such order, the Commissioners would exercise a mature consideration. It occurred to the Commissioners that, in order to save expense to the parties, it might be expedient that a rule, similar to those which had been made in the other cases, should be framed to meet this case, enabling the Accountant-General to receive the funds so transferred

and place them to the credit of the causes to which they would apply. Thus, instead of the costs of a special motion by counsel, at an expense of £5 or upwards, the fund might be transferred, by the operation of the side-bar rule, at a cost of a few shillings. But it appeared the Court of Chancery had not considered it expedient to promulgate such a rule; and, therefore, if the Accountant-General should not think proper to accept the transfer, which the Commissioners thought he with propriety might, without a special order authorizing him so to do, it only remained that the fund should be put to the expense of such an application in each particular case, for he apprehended that the decision of the Commissioners with reference to the transfer of the fund must be conclusive."

Mr. Commissioner Longfield observed, "That with respect to lodgment of money, nothing could be clearer than that the Act of Parliament had vested in the Commissioners the right of transferring to the Court of Chancery or the Court of Exchequer the proceeds of sales under the Incumbered Estates Commission, in cases where they considered it expedient to do so. There could be no apprehension of public inconvenience arising from the transfer of money to the Court of Chancery; but for the existence of the Act under which the Commissioners sat, the Court of Chancery would have to discharge nearly all the business transacted by the Commission. Therefore, if in every case the Commissioners should send the money into the Court of Chancery, they would be only calling upon that Court to do part of that

business, the whole of which it would have to perform but for the passing of this Act. There were only three Commissioners, and a very small staff to do all that was to be done in this Court: but as there was a far greater number of officers under the Court of Chancery, no inconvenience could arise from the transferring of the funds, in such cases as the Commissioners deemed a transfer essential."

With regard to the payment of the funds, and the practice in the Accountant's office, the Commissioners' directions of November, 1851, provide that:—

Directions as
to money
order.

On all applications for money fiats, the Accountant's certificate of the funds, dated on the day of the application, should be produced.

The Accountant has been directed not to give such certificates after 12 o'clock on any day.

Where any person has obtained liberty to have a copy of an account, the requisition for such copy should be lodged with the Accountant two days before the copy is required.

The Accountant has been directed not to answer any inquiries respecting fiats, money orders, or other matters, unless a docket is presented to him containing such inquiry, and signed by a Commissioner or Examiner.

CHAPTER XV.

APPORTIONMENT OF RENT.

IF land *to be sold* shall be subject to a lease comprising *other* land, or if *part* only of any lease is to be sold, the 37th Section authorizes the Commissioners to apportion the rent; it provides :—

If land or lease shall be subject to a lease comprising *other* land, or if part of lease be sold, the Commissioners may apportion rent.

That if any land or lease shall be subject to a lease or under-lease for years or lives, comprising *other land*, at an entire rent, it shall be lawful for the Commissioners to apportion the rent between the land *to be sold* and the *remainder* of the land subject to such rent; and where it is intended to sell a *part* only of any lease in perpetuity, or other lease, it shall be lawful for the Commissioners, where they shall think fit, and (*having regard to the rights and interest of the owner of the reversion*) it shall appear to them just so to do, to apportion the rent, reserved by such lease, between the land to be sold and the remainder of the land; and the Commissioners shall direct notices of any such intended apportionment to be given to such persons, and in such manner as they shall think fit, and shall hear such parties as shall apply to them in relation thereto; and after such apportionment, and after the sale shall be completed, the owners of the reversion in the respective lands shall have the like remedies for the apportioned rents against the lands out of which the same shall be payable, and the owners and occupiers thereof respectively, as were subsisting for the entire rent before such apportionment; and all the covenants, conditions, and agreements of every lease or under-lease, except as to the amount of rent to be paid, shall, as regards the apportioned

parts, remain in force in the same manner as they would have done in case no such apportionment had taken place.

By the present Act, 16 and 17 Vict., c. 64, s. 7, it is provided that the preceding section shall apply and be deemed to have at all times applied to any rent reserved upon a lease, where the Commissioners shall have sold or shall sell the whole reversion expectant upon such lease, at different times, and in different lots.

The following General Rules apply to the preceding section :—

Proceedings
for apportionment
of rent.

That when it is proposed to sell a *part* only of any lease, any person interested may apply to the Commissioners for an apportionment of the rent reserved by such lease; and notice of such proposed apportionment shall be given to the landlord, and to the owner of the remainder of the land included in the lease; and such landlord or owner may lodge in the office a notice of his intention to oppose such apportionment: in which case, the matter shall be heard and determined by the Commissioners.—*36th General Rule.*

Application
for apportionment
may be included in
petition for sale.

Jurisdiction
of Commissioners.

An application for apportionment may be included in a petition for sale.—*37th General Rule.*

It has been decided that the Court has no jurisdiction under the 37th Section to apportion the *head rent* between the several *lots*, unless the petition seek only a sale of part of the lease, or show a *bonâ fide* intention to sell a part only.—*In re A. N. Wrixon*, 2 I. Jur., 167.

Under the 37th Section the Court have a discretionary power to apportion head-rents, but the Court will not exercise that discretion, unless satisfied that the landlord will not only suffer no loss, but be put to no

serious inconvenience.—*In re G. H. Hughes*, 3 I. Jur., 152.

The spirit of the section is that the Court shall apportion “head-rents,” and not “rack-rents.”—*Ib.*

The landlord will be entitled to be paid his costs of appearing on the apportionment, and will also be entitled to receive a counterpart of the order apportioning the rent.—*In re J. J. Halburd.*

Doubts having arisen in respect of the operation of the 37th Section of the former Act, the 7th Section of the recent Statute declares and enacts that :—

The 37th Section of the said recited Act shall apply and be deemed to have at all times applied to any rent reserved upon a lease, when the Commissioners shall have sold or shall sell the whole reversion expectant upon such lease, at different times or in different lots.

Clause explanatory of Section 37 of recited Act.

The Commissioners have issued no forms of petition to be used in seeking an apportionment of rent under the foregoing section; but it would seem that, in most cases where it would be applicable, one or two extra paragraphs in the petition for a sale, showing the necessity for the apportionment, can be easily framed.

CHAPTER XVI.

Partition.

PARTITION OF LAND OR LEASE SUBJECT TO BE SOLD.

When ordered where land or lease subject to be sold.

ON *application* for a sale of an *undivided* share, or *after* sale, the Commissioners may, on application of party interested, and on notice, and hearing the parties, make an order for a partition, under the 43rd Section, which provides :—

That where *an application* shall be made for a sale of an *undivided share* of any *land* or *lease*, or where any such undivided share shall have been *sold* under the Act, and either *before* or *after* the conveyance or assignment thereof, the Commissioners, on the application of any party interested in such undivided share, or of the purchaser (as the case may be), and after causing to be given such notices to the owner or owners of the other undivided share or shares of the same land or lease as they may think fit, and hearing such parties interested in the respective shares as may apply to them; and making, or causing to be made, such inquiries as may enable them to make a just partition, may, if they think fit, make an order, under their seal, for the partition of such land or lease; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each of the undivided shares in such land or lease; and the Commissioners shall have the like authorities, jurisdiction, and powers in relation to such partition, as a Court of Equity would have in the case of a partition under the direction of such Court; and the part so allotted in severalty in respect of each such undivided share, by such order for partition, shall, without any conveyance or other

assurance in relation thereto, go and enure to and upon the same uses Partition. and trusts, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have stood limited or been subject to, in case such order had not been made; and the like order for a sale of the part allotted, in respect of the undivided share, to which the application for the sale shall relate, may be made (where the order for partition is made before sale), and the like proceedings had in relation to such sale, and the like conveyance or assignment may be made of the part allotted in respect of the share sold (where the order for partition is made, *after* sale, and *before* conveyance or assignment), and with the like consequences in the several cases aforesaid, as if the application for a sale, or the sale (as the case may be), had been in respect of the part so allotted; and where any land or lease, or part thereof, to be sold, is subject to any lease, under-lease, or tenancy under which the lessees, under lessees, or tenants hold *jointly* or as *tenants in common*, it shall be lawful for the Commissioners, on the application of any such lessee, under-lessee, or tenant, and after causing to be given such notices as they may think fit, and hearing such parties as may apply to them, and making such inquiries as they may think necessary, to make an order under their seal for the partition, as between such lessees, under-lessees, or tenants, of the land included in their lease, under-lease, or tenancy, *and for the apportionment of the rent* reserved or payable under such lease, under-lease, or tenancy; and after such order of partition, the owner of the reversion in the respective parts of the land shall have the like remedies for the apportioned rents against the respective parts out of which the same shall be payable; and the lessees, under-lessees, or tenants holding such respective parts under such lease, under-lease, or tenancy, and such order of partition, as were subsisting for the entire rent before such partition and apportionment; and all the covenants, conditions, and agreements of every such lease, under-lease, or tenancy, except as to the amount of rent to be paid, shall, as regards the respective parts of the rent, remain in force as against the respective lessees, under-lessees, or tenants to whom, under such partition, such respective parts shall be allotted.

Apportionment of tenants' rent.

As to the jurisdiction of the Commissioners under the foregoing Section, they have come to a decision, *in re Hercules Ellis*, to which attention should be given. Baron Richards, C.C., pronounced the judgment of the Court as follows :—

In re Ellis.

“Sometimes applications are made to us, to sell undivided portions of property—such as the three-fifths or three-ninths, or four-ninths, and the like ; and we make an order to that effect. To carry out that order, it is necessary to make a partition, as between the portions of property which we are called on to sell, and the portions which are not incumbered, and which we are not called on to sell. It appears to be an inconsistent thing—to be scarcely a just thing—towards those several owners of the property which we are not called on to sell, to make a partition in bulk only, as between their shares and the shares that we are about to sell. We have been in the habit, when called on to sell, for example, four-ninths, or the like, of making a partition, which leaves the remaining five-ninths unpartitioned. Now, very often, the parties interested in those remaining five-ninths are desirous of having a partition between themselves, as to their separate shares. I believe there is an opinion abroad, and I believe that opinion has been acted on in some cases, that the Act of Parliament does not authorize us to make such partition, unless on the direct application of the parties whose portions we are not called on to sell. If they be agreed amongst themselves, it is said that they may, under the 45th Section of the Act, apply for a partition *inter se*, and no doubt they may. However, it occurred to me that it was to be considered whether it was not open to us under the 43rd (the general partition) Section, to direct a partition *inter se*, as well with respect to the portions of property we were not selling, as of those portions which are incumbered, and which we are about to sell. My brother Commissioners and myself have looked into the Act ; and we are of opinion that, under the 43rd Section, it is competent to us to make a full and complete partition. We shall, therefore, in future

act on this opinion; and the order which we are now about to pronounce in this case will be considered as ruling this question, and as governing the Court and the Master on all future occasions."

There are three General Rules regulating the practice in cases of application for partition. The first is the 38th, which directs :—

Proceedings
for a parti-
tion under
43rd Section

That when an application for a partition is presented under the 43rd Section of the Act, the Commissioners shall direct what notices shall be served, and on whom, and shall direct advertisements to be published in at least one Dublin newspaper, and one local newspaper, calling upon all parties interested to serve notice of objections (if any they have to a partition), before a certain day therein to be named, and on the day in such advertisement, or as soon after as may be convenient, the Commissioners shall hear the said application, and if no objection shall be substantiated, will issue an order to one or more surveyor or surveyors to make a report according to instructions to be contained in such order, and as soon as the report of the surveyor or surveyors shall be returned to the Commissioners, they shall name a day on which a partition shall be made, unless in the meantime a notice of objection shall be served on behalf of some interested party, in which case the Commissioners shall hear all parties who require to be heard, and examine the proceedings, and make a partition, or such other order thereon as may appear to them to be proper.

38th General
Rule.

The 39th General Rule directs :—

That application for a partition, under the 43rd Section of the Act, may be either included in an original petition for a sale, or made by supplemental petition referring to the former petition, and to the proceedings thereon.

Application
may be in-
cluded in pe-
tition for
sale or by
supplemen-
tal petition.

And the costs of an application for a partition are regulated by the 40th General Rule, which directs :—

Costs of par-
tition.

40th General
Rule.

That the costs properly incurred in proceedings for a partition, including the costs of the survey and advertisements, shall be borne by the owners of the estate, in proportion to their respective shares; and the amount paid by any owner having a limited interest shall be a charge in his favour upon the inheritance or whole interest in the share allotted to him.

The Commissioners have issued forms of petitions to be used in applications for partition either *before* or *after* sale.

TO THE COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN
IRELAND.

No. 1.
Form of pe-
tition for
partition un-
der 43rd
section *be-
fore* sale.

In the Matter of the Estate of Jacob Dixon, of, &c., Esq., an owner of land.	}	The petition of Jacob Dixon, of, &c., Esq., an owner of land,
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Showeth,

That James M'Cann, of, &c., gentleman, did, on the 28th day of May last, present his petition in this Court in the above matter, praying for a sale of one undivided moiety of certain lands and premises in such petition mentioned or referred to, of which moiety your now petitioner is the owner, and the matter of the said petition is still pending, and no sale has been made under the said petition.

That Sarah Bright, of, &c., spinster, and Jane Dickins, of, &c., widow, are the owners of the other moiety of the said premises, the said Sarah Bright being entitled to one-fourth part of such moiety, and the said Jane Dickins to three-fourth parts thereof.

That the said Sarah Bright has been found a lunatic by inquisition, and Thomas Bright, of, &c., gentleman, is the committee of her estate, and Mw. Allen, of, &c., Esq., is the committee of her person.

That your petitioner believes that the said Jane Dickins is tenant for her life only of her said shares, but your petitioner has not been able to learn how such estate was created, or who is entitled in remainder.

That your petitioner is desirous that a partition should be made of the said premises before proceeding to a sale of his moiety thereof.

Your petitioner, therefore, prays that a partition may be made of the premises mentioned in the said petition for sale, and that your petitioner may have such further and other relief in relation to the matters aforesaid, as to the Commissioners shall seem meet.

TO THE COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN IRELAND.

In the Matter of the Estate
of Jacob Dixon, of, &c.,
Esq., late an owner of
land, and of Samuel
Green, of, &c., Esq., a
purchaser of such land.

The petition of Samuel Green, of, &c.,
Esq., an owner of land,

No. 2.
Form of petition for partition under 43rd Section after sale and conveyance.

Showeth,

That James M'Cann, of, &c., gentleman, did, on the 28th day of May, last, present his petition in this Court, "*In the matter of the Estate of Jacob Dixon, of, &c., Esq.,*" praying for a sale of one undivided moiety of certain premises, including the lands and premises mentioned in the schedule hereunto annexed; and that such proceedings were had in the matter, that on the 30th day of August last, two of the Commissioners duly conveyed one undivided moiety of the premises mentioned in the schedule hereto unto your petitioner, his heirs and assigns for ever.

That the other moiety of the said premises is vested in fee in John Taylor, of, &c., Esq., and Richard Smyth, of, &c., merchant, as trustees of the will of Thomas M'Mahon, of, &c., brewer, deceased, upon trust to pay certain annuities to A. B. and C. D., and subject thereto upon certain trusts under which the children of the said Thomas M'Mahon are interested.

Your petitioner, therefore, prays that a partition may be made of the premises mentioned in the schedule hereto, and

that your petitioner may have such further and other relief in relation to the matters aforesaid, as to the Commissioners may seem meet.

Schedule. Schedule of lands intended to be partitioned, specifying the denominations and head-rent (if any) and the tenancies.

Directions. If the purchaser has mortgaged, settled, or otherwise dealt with the property, there shall be an abstract of his title.

The purchaser may petition for a partition before he has obtained his conveyance, in which case he may, if convenient, describe the lands by reference to the order for sale.

Practice—
upon petition for a partition: order to be made.

Upon petitions for partition, an order will be made that notice be served, under the 38th General Rule, on the parties interested, requiring them to serve notice of objection, if any they have, to the partition sought in the matter, and that an advertisement be inserted in certain papers calling upon all parties interested to serve notice of objection, if any they have, to the partition.

Notices and advertisements.

The notice and advertisement will be merely a copy of the order, and directions will be given by the Commissioner before whom the matter may be, for the publication of the advertisement; and, if no objection be lodged, an order will be made appointing one or more surveyor or surveyors to partition the property.

Survey. Upon the return of the map and partition made by the surveyor an order for the partition will be made, unless in the meantime a notice of objection be served, in which case the Master will hear all parties requiring to be heard, examine the proceedings, and make a final order, or such other order as he considers proper and necessary.

Final order for partition.

CHAPTER XVII.

EXCHANGE, WHERE LAND OR LEASE SUBJECT TO BE SOLD.

ON *application for sale or after sale*, the Commissioners Exchange. may, on application of parties interested, upon *consent*, make an order for an exchange of lands under the 44th Section, which provides:—

That where an application shall be made for a sale of any land or lease, or part thereof, or where the sale shall have been sold, and either *before* or *after* the conveyance or assignment thereof, if application be made to the Commissioners by any party interested in such land or lease, or by the purchaser (as the case may be), for the exchange of *all* or any *part* of such land, or of all or any part of the land comprised in such lease, for other land which the owner thereof may be *willing* to give in exchange, the Commissioners may make or cause to be made such inquiries as they may think fit for ascertaining whether such exchange would be beneficial to the persons interested in the respective lands, and cause such notices to be given to parties interested in the respective lands as they may think fit; and if, after making such inquiries, and hearing such parties interested in the respective lands as may apply to them, the Commissioners shall be of opinion that such exchange will be beneficial, and that the terms thereof, as proposed, or as modified by them, with the consent of such owner as aforesaid, are just and reasonable, they may make an order under their seal for such exchange accordingly, and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order;

Order for, where land or lease subject to be sold.

and the land taken upon such exchange, under such order, shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given on such exchange would have stood limited or been subject to in case such order had not been made; and the like order for a sale may be made in respect of the land taken in exchange for any land, or any land comprised in any lease to which the application for a sale shall relate (where the order for exchange is made before sale), and the like proceedings had in relation to such sale, and the like conveyance or assignment may be made in respect of the land taken in exchange for the land or lease, or part thereof, sold (where the order for exchange is made after sale, and before conveyance or assignment); and with the like consequences, in the several cases aforesaid, as if the application for a sale, or the sale (as the case may be), had been in respect of the land so taken in exchange.

The 41st General Rule directs:—

Application may be included in petition for sale or by supplemental petition.

That application for an exchange under the 44th Section of the Act may be either included in an original petition for sale, or made by supplemental petition, referring to the former petition, and to the proceedings thereon.

Costs of, how regulated.

And the costs of the application for exchange or division are regulated by the 42nd General Rule, which directs:—

That the costs properly incurred in proceedings for an exchange or division, shall be borne in such proportions as the Commissioners shall direct, having regard to any special agreement between the parties; and the amount paid by any owner having a limited interest shall be a charge in his favour, upon the inheritance or whole interest in the lands allotted to him.

Exchange where Land to be sold, or sold. 275

The following is the form of petition directed to be used :—

TO THE COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN
IRELAND.

In the Matter of the Estate
of Jacob Dixon, of, &c.,
Esq., late an owner of
land, and of Samuel
Green, of, &c., Esq., a
purchaser of such land.

The petition of Samuel Green, of
&c., Esq., an owner of land,

Form of
petition for
exchange
after sale
and convey-
ance, the
proceeding
upon the
petition for
sale being
still pending.

Showeth,

That James M'Cann, of, &c., gentleman, did, on the 28th day of May last, present his petition in this Court, "*In the matter of the Estate of Jacob Dixon, of, &c., Esq.*," praying for a sale of the premises mentioned in the first schedule hereto, the same premises being then held by the said Jacob Dixon, in fee-simple, subject to a fee-farm rent of £20; and that such proceedings were had in the said matter, that on the 30th day of August last, two of the Commissioners duly conveyed the said premises unto your petitioner, his heirs and assigns.

That your petitioner has agreed with the Right Hon. James Earl of B. for an exchange of the said premises for the premises mentioned in the second schedule hereto, whereof the said James Earl of B. is seized in fee-simple, and William M'Mahon, who is the sole incumbrancer on the premises mentioned in the said first schedule, has joined in the said agreement, and thereby agreed to accept a mortgage of the said premises mentioned in the said second schedule, in lieu of his said former mortgage, as by the said abstract of title more fully appears.

That your petitioner has caused an abstract of the title of the said James Earl of B. to the said premises mentioned in the second schedule, to be lodged with this petition.

That the said exchange will be very beneficial to your petitioner

and his children, inasmuch as the premises mentioned in the said first schedule are dispersed and intermixed with the lands of the said James Earl of B., and the said Earl being desirous of laying out such lands for building purposes, and being unable conveniently to do so without acquiring the said lands mentioned in the first schedule, has been willing to contract for the same upon terms highly advantageous to your petitioner and his children.

Your petitioner, therefore, prays that an exchange may be made of the aforesaid premises upon the terms herein-before mentioned, or upon such other terms as the Commissioners shall approve of, and as shall be consented to by the said James Earl of B., and that your petitioner may have such further and other relief in relation to the matters aforesaid, as to the Commissioners shall seem meet.

Schedules specifying the denominations, the head or quit-rent (if any), and the tenancies.

Schedule.

If proceedings upon the original petition for a sale are no longer pending, both owners should be petitioners under the 46th Section, and the petition should be entitled, "*In the Matter of the Estate of Samuel Green, of, &c., and the Estate of the Right Hon. James Earl of B.*"

The foregoing precedent may be adapted to the case of a petition by the owner *before* sale, or by the purchaser *after* sale and *before* conveyance; and to the case of a petition for a division of intermixed lands.

CHAPTER XVIII.

PARTITION, EXCHANGE, OR DIVISION, WHERE LAND NOT SUBJECT TO BE SOLD.

HITHERTO attention has been directed exclusively to such portions of the Act as relate to cases where the primary object was the *sale* of property; a few provisions still remain to be considered in this chapter respecting cases in which sales are *not* contemplated or sought, but where, consistently with the general spirit of the Statute, it has been thought advisable to afford facilities for the *partition, exchange, and division* of *land*, irrespective of a sale.

Jurisdiction of Court in cases where land not subject to be sold.

Partition of *land* may be made where the shares are *not subject* to be sold under the Act, in pursuance of the 45th Section, which provides:—

Partition may be made of land where shares not subject to be sold.

That it shall be lawful for the Commissioners, upon the application of the *owners* of the several undivided shares (*not subject to be sold, or as to which no proceedings for a sale under the Act shall be pending*) of any land, who shall desire to effect a partition of such land, to make or cause to be made such inquiries as the Commissioners may think fit, for ascertaining whether such partition would be beneficial to the persons interested in such respective shares; and in case the Commissioners shall be of opinion that the proposed partition would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such partition accordingly; and in such order, or in a map or plan annexed

thereto, shall be shown the part allotted in severalty in respect of each such undivided share; and the part so allotted in severalty in respect of each such undivided share by such order of partition shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses, and be subject to the same conditions, charges, and incumbrances, as the undivided share, in respect of which the same is so allotted, would have stood limited, or been subject to, in case such order had not been made.

The following form of petition and General Directions have been issued by the Commissioners :—

TO THE COMMISSIONERS FOR SALE OF INCUMBERED ESTATES IN
IRELAND.

Form of petition for partition under 45th Section.

In the Matter of the Estate
of John Jones, of, &c., farmer;
William Blake, of, &c., bookseller;
and Jane, the wife of Ar. Daly, of, &c., innkeeper, owners of land.

The petition of John Jones, of, &c., farmer; Wm. Blake, of, &c., bookseller; and Jane, the wife of Ar. Daly, of, &c., innkeeper, owners of land,

Showeth,

That your petitioners are the owners of the lands and premises mentioned in the first schedule hereunto annexed, which are held for an estate in fee-simple, subject to an annual quit-rent of £2 16s. 8d. payable to the crown.

That your petitioner, John Jones, is the owner of seven equal sixteenth parts of the said premises, in the following manner, that is to say, he is entitled in fee-simple to four of such parts, and is tenant for his life of the remaining three of such parts, with remainder to such of his children as shall be living at his decease, equally as tenants in common in fee, as by the Abstract of title lodged herewith by the said John Jones more fully appears.

That your petitioners, William Blake and Sarah his wife, formerly

Where Estate not subject to be sold. 279

Sarah Jones, spinster, in right of the said Sarah Blake, are entitled in fee-simple to one equal sixteenth part of the said premises, as appears by the Abstract of title lodged herewith by the said William Blake. Form of petition.

That no settlement was ever made of the said share of the said Sarah Blake.

That your petitioner, Jane Daly, is entitled for her life and during her present coverture, for her separate use to one moiety or eight equal sixteenth parts of the said premises, the said Jane Daly being so entitled under the settlement made upon her marriage with Ar. Daly, bearing date the 23rd day of July, 1827, whereby the said last-mentioned parts (which were the property of your petitioner, Jane Daly, then Jane Jones, spinster), were vested in certain trustees upon trust, during the joint lives of your petitioner, Jane Daly, and her said husband, for your petitioner, Jane Daly, for her separate use, with power of anticipation. And upon further trust for the survivor of your said petitioner and her said husband during her or his life. And upon trust, after the decease of your said petitioner and her said husband, to sell the said shares and hold the proceeds thereof upon trust, for such of the children of your petitioner, Jane Daly, as being sons should attain the age of twenty-one years, or being daughters should attain that age or marry, as by the abstract of title lodged herewith by the said Jane Daly more fully appears.

That your petitioners are desirous to effect a partition of the said premises, and have proposed that such partition should be made on the following terms (that is to say), that the premises mentioned in the first denomination of the said schedule, subject to the quit-rent of 14s. 2d., should be allotted in respect of the four-sixteenth parts whereof your petitioner, John Jones, is seized in fee; that the premises mentioned in the second denomination of the same schedule, subject to the quit-rent of 10s. 7½d., should be allotted in respect of the three-sixteenth parts, whereof your petitioner, John Jones, is tenant for life; that the premises mentioned in the third denomination of the same schedule, subject to the quit-rent of 3s. 6½d.,

should be allotted in respect of the one-sixteenth part of your petitioner, Wm. Blake, and Sarah his wife; and that the premises mentioned in the fourth denomination of the same schedule, subject to the quit-rent of £1 8s. 4d., should be allotted in respect of the eight-sixteenth parts settled for the benefit of your petitioner, Jane Daly, and her husband and children.

Your petitioners, therefore, believing that such partition will be beneficial to all persons interested in the premises, pray that a partition may be made of the said premises according to the terms aforesaid, and that your petitioners may have such further and other relief in relation to the matters aforesaid, as to the Commissioners shall seem meet.

Schedule. Schedule (showing the lands in the divided parts, and stating minutely any rights of way or other easements created for the purpose of the partitions.)

General directions. If convenient, the general description of the whole property may be placed in a separate schedule from the divided lots, and in all cases the schedule must specify the denominations of the land, the head-rent, or quit-rent, if any, with the arrears, if any; the tenants' names; and the date and description of the instrument (if any) under which each tenant holds.

Incumbrances. If there be any incumbrances affecting the entirety of the property, or of any portion thereof, they should be noticed: and incumbrances affecting any undivided shares should be scheduled or mentioned explicitly in the body of the petition.

Abstract of title. The petition should be accompanied by concise abstracts of each petitioner's title, from the period when the interests were severed, and by an affidavit by each petitioner, or his attorney, that he has read the petition, including the schedules, and also the abstract of his own title, and that he believes the petition and schedules to be true, and that he believes the abstract to be a fair and correct abstract of his title. The deponents must sign the petition and each schedule, and each deponent must sign the abstract to which his affidavit relates.

Exchanges may be made of lands *not subject* to be sold, under the 46th Section, which provides :—

Exchange.
Where lands
not subject
to be sold.

That it shall be lawful for the Commissioners, upon the application of the owners of lands *not subject to be sold, or as to which no proceedings for a sale shall be pending*, who shall desire to effect an exchange of such lands, to make or cause to be made such inquiries as the Commissioners may think fit for ascertaining whether such exchange would be beneficial to the persons interested in the respective lands; and in case the Commissioners shall be of opinion that the proposed exchange would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given upon such exchange would have stood limited or been subject to in case such order had not been made.

Where lands are *intermixed* a petition for a division of them can be presented under the 47th Section, which provides :—

Division of
intmixed
lands may be
effected, al-
though *not*
subject to be
sold under
Act.

That it shall be lawful for the Commissioners, upon the application of any number of persons who shall be separately owners of parcels of land *not subject to be sold, or as to which no proceedings for a sale shall be pending*, so intermixed, or divided into parcels of inconvenient form or quantity, that the same cannot be cultivated or occupied to the best advantage, but forming together a tract which may be divided into convenient parcels, and who shall desire to have the whole of such tract divided into convenient parcels, to be allotted in lieu of the old parcels, to make or cause to be made such inquiries as

the Commissioners may think fit, for ascertaining whether such proposed division and allotment would be beneficial to the persons interested in such lands; and in case the Commissioners shall be of opinion that the proposed division and allotment would be beneficial, they shall make an order for the division and allotment thereof accordingly, with a map or plan thereunto annexed, in which shall be specified as well the parcels in which the several persons on whose application such order shall have been made were respectively interested before such division and allotment, as the several parcels allotted to them respectively by such order; and the parcels of land taken under such division and allotment shall go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the several lands which the persons taking the same shall have relinquished or lost on such division would have stood limited or been subject to in case such order had not been made.

Notice of
partition.
Exchange or
division to
be given in
cases where
land not
subject to be
sold.

Notices of partition, exchange, or division, under the 45th, 46th, and 47th Sections, are required by the 48th Section, which provides:—

That in the case of land in respect of which *proceedings for a sale* shall not be pending, no such order of *partition*, or of *exchange* or of *division* and *allotment*, shall be made by the Commissioners until such notices by advertisement in such public newspaper or newspapers as the Commissioners shall direct shall have been given of such proposed partition, exchange, or division and allotment, and *three calendar months* shall have elapsed from the publication of the last of such advertisements; and *in case*, before the expiration of such three calendar months, any person entitled to any estate in, or to charge upon, any land included in such proposed partition, exchange, or division and allotment, shall give notice in writing to the Commissioners of his *dissent* from such proposed partition, exchange, or division and allotment (as the case may be), the Com-

Commissioners shall not make an order for such partition, exchange, or division and allotment, unless such dissent shall be withdrawn, or it shall be shown to the Commissioners that the estate or charge of the party so dissenting shall have ceased, or that such estate or charge is not an estate or charge in respect of which he would be entitled in Equity to prevent such partition, exchange, or division and allotment; but no such order as aforesaid shall be in anywise liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same shall have been made.

There are no precedents of petition under the 46th or 47th Sections given; the preceding precedents can be easily adapted to any required case; but the petition should be entitled in the matter of the *different* estates to which it refers.

Remarks upon proceedings for partition, exchange, and division.

It is one of the Commissioners' by-rules, in reference to *partition, exchange, or division, by consent*, that:—

In all cases of *partition* by consent, and of *exchange* and *division* of intermixed lands, the affidavit of the petitioner or petitioners shall deny all *collusion*, and shall state that no consideration has been directly or indirectly given or agreed to be given otherwise than as appears by the petition and abstracts.

Petitions for partition, &c. by consent should be specially verified.

It will be remarked, that by the provisions of the several sections—45 to 48—relating to proceedings for partition, exchange, and division, the Commissioners have only jurisdiction where there is no *dissent* by any party, and their provisions are confined to *land*. Leasehold interests are excluded; proceedings for partitions of lands *subject to be sold* under the Act have not been of unfrequent occurrence; but the provisions of the other sections, relating to lands *not* subject to be

Jurisdiction of Commissioners.

sold, have not been called into use. No question necessary to notice has arisen upon the proceedings for a partition, which will be found to be very simple.

Orders for
partition,
&c. con-
clusive.

Under the 49th Section of the Act all *orders* for *partition*, *exchange*, or *division* made by the Commissioners under their seal, are *for all purposes* conclusive *evidence* that all necessary proceedings previous to the order had been taken, and the orders cannot be impeached for *informality*.

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CHAPTER XIX.

CONVERSION OF LEASES IN PERPETUITY INTO FEE-FARM GRANTS. — COMMISSIONERS' DIRECTIONS AND RULES THEREON.—FORM OF ORDER.—RIGHTS TO BE COMMUTED.—TABLES.—FORMS OF CONVEYANCES.—DEED OF COVENANT.—SALE OF ARREARS OF RENT.

By the recent Incumbered Estates Continuance Act, 16th and 17th Vic., c. 64, sec. 3, the Commissioners are empowered, where a lease in perpetuity is ordered to be sold, to convert it into a fee-farm grant; thus obviating considerable delay and difficulty in obtaining fee-farm grants, and, consequently, facilitating and improving the sale of interests in such leases.

The Section provides:—

That where the Commissioners have ordered or shall order the sale of any lease in perpetuity, they may, if they shall think it expedient so to do, cause notice to be given to the owner or other persons interested in the reversion, or any person on behalf of such owner or other persons, and may thereupon proceed to convert such lease in perpetuity into a fee-farm grant, according to the principles prescribed in the Renewable Leasehold Conversion Act, but their procedure in relation thereto shall be according to the General Rules and practice of the Court of the said Commissioners, and in case such conversion shall be ordered they shall have power to convey the land included in such lease to the purchaser in fee, subject to the fee-farm

Where a lease in perpetuity is ordered to be sold, the Commissioners may convert it into a fee-farm grant.

rent ascertained as aforesaid, and to such exceptions, reversions, covenants, and clauses as shall be in conformity with the original lease, and the provisions of the Renewable Leasehold Conversion Act, and thereupon the owner for the time being shall have the same rights and remedies against the purchaser, his heirs, executors, administrators, and assigns, and against the land, by action, distress, entry, or otherwise, in respect of such rent, and of any exceptions, reservations, covenants, and clauses contained in the said deed, as belong by law to the owner of any fee-farm rent created under the said Acts.

In order to give effect to the foregoing section, and to point out the course of practice in proceeding under it, the Commissioners have issued the following directions and forms, dated 18th November, 1853, and which have been published after the preceding part of this book was in print.

Commissioners' directions, 18th November, 1853.

“ In any case where a lease in perpetuity is ordered to be sold, the Solicitor having the carriage of the proceedings shall, either before, or at the time of applying for the order to settle a rental, or at such other time as shall be approved of by the Commissioner having the charge of such matter, lay a statement of facts before such Commissioner, containing all necessary information respecting such lease, and the name of the landlord, or successive landlords, if there be more than one superior lease in perpetuity, under which the premises are holden, and the names and the ages of the several *cestuis que vie*, so far as the same can be ascertained, and the times of the deaths of such of them as are dead, and all such other information as the Commissioner shall in each case require; and thereupon, in case it shall be considered

Statement of facts.

advisable by the Commissioner that a conversion should take place under the Renewable Leasehold Conversion Act, he will grant a conditional order to that effect, and direct upon whom such order is to be served, and such conditional order shall, as far as practicable, contain a declaration or statement:—

" 1st. As to the amount computed to be due for arrears of rent, receivers' fees, costs of proceedings, if any, for recovery of such rent, making the proper allowance for poor rates, &c.

" 2nd. The amount due for fines, fees, and interest, in order to entitle the tenant to a renewal.

" 3rd. The amount of the proposed future fee-farm rent.

" 4th. The covenants, reservations, &c., proposed to be commuted under the Renewable Leasehold Conversion Act, and the proposed additional rent, in respect of such commutations.

" And such conditional order shall also contain such other particulars as the Commissioner granting the same shall direct, and shall contain, in a schedule, a clear account of the computation of arrears of rent and of fines.

" In case any party shall be desirous of showing cause against such conditional order, and shall serve notice for that purpose, the application to make absolute such conditional order shall be moved before the Commissioner by whom the said conditional order shall have been granted; all parties being at liberty to have such application reheard as of course before the full Court.

Conditional
order.

“The conditional order is to be drawn up by the Registrar in the accompanying form; and in order to avoid any just exception being taken to it by the landlord, the materials for the preparation of such order should be ascertained, and the necessary computations made, with great care. Where any substantial cause is established by the landlord, the costs of the conditional order will be disallowed, unless the Commissioner should award such costs, or any part thereof, on being satisfied that reasonable exertions were made to enable the Registrar to prepare the conditional order correctly.

Documents
to be served
on the rever-
sioner.

“A copy of the statement of facts on which the conditional order is grounded, and where the amount of the fee-farm rent has been directed to be ascertained by a notary, a copy of the case, and opinion thereon, are to be served on the owner of the reversion, along with the conditional order; but these need not be served on the other parties directed to be served with the order, unless the Commissioner shall so direct; but the statement of facts must be lodged in the office of the General Clerk before the issuing of the conditional order.

Tables.

“In ordinary cases, the addition to the fee-farm rent, in lieu of renewal fines, may be ascertained from the accompanying table; and any addition for commuted covenants will be fixed by the Commissioners.

“Where the lease to be sold is not held directly under the fee, but there are superior leases, it will be necessary that the final order for conversion should extend to all the leases, so as to enable the Commissioners to convey the fee to the purchaser; but it will ordinarily be

desirable to make separate conditional orders for each lease.

“The final or absolute order for conversion is to be Final order. drawn up by the Registrar, having regard to the conditional order, or orders, on which it is founded, and to the Commissioner's fiat (if any) made in relation thereto, and is to be submitted to the Commissioner for his approval, before passing the seal of the Court: and such absolute order shall contain the tenor of all the covenants and agreements, which are to continue subsisting on the part of the owner of the rent, and the owner of the land, respectively.

“The substance of the order for conversion should be stated on the rental, which shall also provide for the execution by the purchaser of a proper deed of covenant, in case the Commissioners shall so direct.

“The landlord may, after the sale, apply for any sum Payment of fines. found due to him for rent, fines, and fees; and any further rent, fines, fees, and interest, which may have accrued since the date of the order for conversion; and shall be entitled to a duplicate of the Commissioner's conveyance.

“The present directions are to apply to any Estate which has not yet been posted; and with regard to leases now posted for sale, or already sold, but not conveyed to the purchaser, the necessary proceedings for conversion may be taken by the purchaser, if he shall think proper, at his own expense.”

FORM OF CONDITIONAL ORDER FOR CONVERSION.

Tuesday, Nov. 24, 1853.

Form of order.

In the Matter of the
Estate of, &c.

Upon motion of Mr.

Solicitor

_____ } for the Petitioner, and upon
reading the statement of facts filed in the office of
the General Clerk the 20th instant, and upon reading the
order for sale in this matter, dated 1st January, 1853,
whereby it appears that the Commissioners have ordered
a sale of a lease in perpetuity of the lands of Clonea, in
the "Barony of," &c., such lease being dated the 9th
day of August, 1769 :* It is ordered by the Commis-
sioners that the said lease be converted into a fee-farm
grant, on the following terms ; that is to say :—

1st. That the fee-farm rent shall be the yearly sum of
£88, in lieu of the present rent of £82 7s., and of the
renewal fines and fees, and of the exceptions, reserva-
tions, and rights hereinafter stated to be commuted.

2nd. That the amount now due for arrears of rent,
including receiver's fees, after deducting the proper pro-
portion of poor's rate, is £39 2s. 4d.

3rd. That the amount now due for renewal fines and
fees, and interest up to the present day, is £50 3s. 6d.

4th. That the exceptions, reservations, and rights,
under covenants mentioned in the schedule hereto, shall
be commuted for the annual sums therein also mentioned
—such sums being included in the said rent of £88.

* If the order apply to a superior lease, add, " And it appearing that the
title of the lessor is derived under a certain other lease in perpetuity, dated
the 8th January, 1768."

Unless cause be shown to the contrary, within twenty-one days after the service of this order upon, "&c."

And it is further ordered, that in case the owner of the reversion shall be willing to accept an addition to the fee-farm rent in lieu of any of the other exceptions, reservations, and covenants in the said lease, he shall be at liberty to apply to the Commissioners in relation thereto, upon notice to the Petitioner and the parties who have appeared in this matter.

SCHEDULE.

Account of Head-rent.

	£	s.	d.
To half-year's rent, due 1st Jan., 1854, .	41	3	6
Deduct half poor's rate, at 2s., .	2	1	2
	<hr/>		
	£39	2	4
	<hr/>		

Account of Fines, &c.

To amount of fine on death of Jas. Stokes,			
who died in Nov., 1849, . . .	41	3	6
Interest thereon to present time, . . .	9	0	0
	<hr/>		
	£50	3	6

RIGHTS TO BE COMMUTED.

The covenant not to plough or sow with corn or grain, in any one year, more than two-third parts of the arable land included in the lease, and the reservation of penal rents for breach of the said covenant, to be commuted into the payment of the annual sum of 4s., &c. &c.

Table. TABLE showing the Addition to the Rent in lieu of the Renewal Fines.

Age of Life.				
Between 4 and 20,	.	.	.	3 Pence.
„ 20 „ 34,	.	.	.	4 „
„ 34 „ 46,	.	.	.	5 „
„ 46 „ 54,	.	.	.	6 „
„ 54 „ 60,	.	.	.	7 „
„ 60 „ 68,	.	.	.	8 „
„ 68 „ 74,	.	.	.	9 „
Above 74,	.	.	.	10 „

Directions
for use of
Table.

For each life in being, take the sum in the Table opposite the age of the life; and for each life dropped, take three pence. The total of these will be the addition to the rent for *each* pound sterling of the renewal fine.

This Table is to be applied to cases of leases for lives, or for years determinable on lives, where the tenant is entitled to a renewal on the fall of each life; but is not applicable to leases for years absolute renewable for ever.

FORMS OF CONVEYANCE UPON CONVERSION OF LEASES IN PERPETUITY.

No. 1.—*Where the Lease to be converted is held directly under the Fee.*

[Recite the original lease in perpetuity as in the Forms heretofore given.]

And whereas the Commissioners for Sale of Incumbered Estates in Ireland have, by order duly made by them for

that purpose, directed that the said lease should be converted into a fee-farm grant upon the following terms:—

[Insert a copy of the body of the order.]

Now we,

and

two of the Com-

missioners for Sale of Incumbered Estates in Ireland, under the authority of an Act passed in the 13th year of the reign of Queen Victoria, intituled "An Act, &c.," and of the Acts for continuing and amending the same, in consideration of, "&c.," do grant unto the said R. S. the town and lands of Clonea, in the barony of Ikerrin, and county of Tipperary, containing 350 acres, 3 roods, and 16 perches, statute measure, or thereabouts, and described in the map annexed hereto, with the appurtenances (excepting, &c.)* To hold the same unto the said R. S., his heirs and assigns for ever, subject to the leases and tenancies mentioned in the schedule hereto, and subject to the perpetual yearly rent of eighty-nine pounds, payable half-yearly, on the 1st day of January, and the 1st day of July in each year (the first half-yearly payment being due on the 1st day of July, 1854), such rent being a fee-farm rent, under the Renewable Leasehold Conversion Act, in respect of the said lease for lives renewable for ever, and subject to all powers and remedies for enforcing payment of the said rent, or existing in respect thereof, and also subject to the covenants on the

* The exceptions, &c., are to follow the terms of the lease, except so far as they may be modified by the order for conversion.

part of the owner of the land mentioned in the said recited order, and with the benefit of the covenants on the part of the owner of the fee-farm rent also mentioned in the said recited order.

In witness whereof, &c.

FORM OF DEED OF COVENANT,

Accompanying Commissioner's Conveyance, and to be engrossed on the same Parchment.

This Indenture, made the seventh day of March, 1854, between John Stokes, of ———, Esq., of first part, and R. S. of the second part, witnesseth that the said John Stokes doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said R. S., his heirs and assigns, to observe the several covenants referred to in the annexed conveyance, on the part of the owner of the rent, and that the said R. S. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said John Stokes, his heirs and assigns, to observe the several covenants referred to in the annexed conveyance, on the part of the owner of the land.

In witness whereof, &c.

FORM OF HABENDUM,

Where the Interest to be converted is an Under-lease.

To hold the same unto the said R. S., his heirs and assigns for ever, subject to the leases and tenancies men-

tioned in the schedule hereto, and subject in the first place to the perpetual yearly rent of £89, payable half-yearly, on the 1st day of January, and the first day of July in each year (the first half-yearly payment being due on the first day of January, 1854), such rent being a fee-farm rent under the Renewal Leasehold Conversion Act, in respect of the said lease for lives renewable for ever, dated the seventh day of July, 1779; and such fee-farm rent being payable in the first instance by the owner for the time being of the fee-farm rent of £153, next hereinafter reserved, and subject in the next place to the perpetual yearly rent of £153, payable half-yearly, on the 10th day of April, and the 10th day of October in each year (the first half-yearly payment being due on the 10th day of April, 1854), such rent being a fee-farm rent under the Renewable Leasehold Conversion Act, in respect of the said lease for lives renewable for ever, dated the 7th day of November, 1781, and subject to all powers and remedies for enforcing payment of the said rents, or existing in respect thereof, and also subject to, and with the benefit of the covenants contained or referred to in the said order, on the part of the owner of the land for the time being, and the respective owners of the said rents for the time being.

In witness, &c.

This deed of conveyance is to be accompanied by such deed or deeds of covenant as the Commissioners may direct to be executed, in a form similar to the one before given, all of which may be placed on the same parchment.

Sale of arrears of rent.

It will also be observed that under the Incumbered Estates Continuance Act, section 9, the Commissioners are empowered to include arrears of rent in the sale.

That section provides :—

Commissioners may include arrears of rent in a sale.

That where a sale is made by the Commissioners under the said Act or this Act of any land or lease, it shall be lawful for them, whenever it shall appear to them convenient so to do, to include in such sale all or any part of the arrears of rent, if any, which may at the time of the sale be owing from any lessees or tenants, subject to whose leases or tenancies the sale is to be made, where such arrears are subject to any incumbrance in respect of which an incumbrancer shall have obtained an order for sale, or where the order for sale has been obtained by the owner, and in the conveyance or assignment of such land or lease to assign such arrears to the purchaser accordingly; and such purchaser, his heirs, executors, administrators, or assigns, shall, after such assignment of the said arrears, have for the recovery and in respect of the non-payment thereof, the same rights and remedies which the person or persons who would have been entitled to such arrears would have possessed if no such assignment thereof nor any conveyance or assignment of such land or lease had been made.

In order to give effect to the foregoing section, and to point out the practice in proceeding under it, the Commissioners' directions of 18th November, 1853, provide :—

“That on settling the rental, the petitioner, or the party interested, may apply to the Master to have the arrears of rent due by any tenant, at the time of sale, included in the lot; and in case the Master, after a full consid-

ration of the matter, shall grant such application, it shall be stated on the rental that such arrear as may be due at the time of sale is so included in the lot.

“Every conveyance to a purchaser may contain an assignment of rent, which may have fallen due subsequently to the sale, as well as of any arrears of rent due prior to the sale, and included in the lot.”

CHAPTER XX.

COSTS.—PROVISIONS OF ACT AS TO PAYMENT OF.—JURISDICTION OF COMMISSIONERS OVER EQUITY COSTS.—ORDER IN WHICH COSTS PAYABLE.—COSTS OF PARTY PROVING INCUMBRANCE.—OF AFFIDAVIT CONTAINING IMPROPER MATTER.—RULES FOR TAXATION OF.—CASES WHERE COSTS ALLOWED AND DISALLOWED.

THE several portions of the Act, and the General Rules in relation to the costs incidental to all the proceedings, are here arranged together, and by referring to the Appendix and the Schedule of Fees, it will be found that everything on the subject of costs has been collected.

The 30th Section provides :—

Provisions of
Act as to
payment of
costs.

That the Commissioners shall, out of the purchase money to be received on the sale of any land or lease, or part thereof, under the Act, allow and pay such costs of and consequential on the application for the order for the sale *as they shall think fit*, and the expenses of and incidental to the sale.

It would seem by this Section that the Commissioners had a discretion in giving or withholding the costs of the sale. However, by a subsequent section (40th), it will be seen that full power is conferred on the Commissioners in reference to *all* costs; it provides :—

That in *every proceeding* under the Act the Commissioners shall have full power and discretion as to the giving or withholding costs and expenses, and as to the persons by whom and the funds out of which the same shall in the first instance or ultimately be paid, repaid, and borne, and shall and may apportion the same amongst such parties, and in respect of interest, rents, or income, and principal or corpus, as they shall see fit.

Jurisdiction of Commissioners as to costs of all proceedings in their Court.

By the Incumbered Estates Continuance Act, Section 12, it is provided that:—

In the case of any petition for a sale presented after the passing of this Act, the costs of the petitioner in respect of such petition, and of any proceedings thereunder, shall not (unless the Commissioners shall otherwise direct) be payable out of the proceeds of the sale, otherwise than in the same order of priority in which the incumbrance of the petitioner shall be payable, anything in the said recited Acts, or any rule or practice of the Commissioners, to the contrary notwithstanding.

16 & 17 Vict., c. 64, s. 12.

The Commissioners not only have the power of awarding or refusing costs of the proceedings in their Court, but in certain cases they have the power of deciding what costs, incurred in *Equity* proceedings, should be paid out of the proceeds of the sale; where there has been a bill filed, or decree for an account pronounced, or a report under a decree in an *Equity* cause, or *any other pending* proceeding in a Court of *Equity*, the Commissioners have full power to make provision for the payment of any costs incurred in relation to the proceedings in the Court of *Equity*, as the circumstances of the case may require. (Section 41.)

And over costs of *Equity* proceedings.

It may be here noticed, that, in order to obtain the

Mode of obtaining order for Equity costs, and certificate to have same taxed.

Commissioners' decision upon what Equity costs will be allowed by them, and to have them ascertained, the practice is to serve notice upon all parties of an application to be made in Chamber, for an order allowing the costs claimed, and, if allowed, for the Commissioners' certificate for the purpose of having them taxed. If the costs claimed be such as the party *would have been eventually* entitled to recover in the Equity proceedings, the Commissioners will grant a certificate, indorsing the order for it upon the notice of motion, upon the production of which in the Registrar's Office the certificate will be prepared; and by a General Order of the Court of Chancery, dated 18th June, 1850, this certificate will be received as a side-bar rule, and an order obtained in the Registrar's Office in the Court of Chancery referring the costs to the Taxing Officer of that Court.

Order in which costs chargeable against a fund produced by a sale are to be paid.

The order in which the *costs* chargeable against the fund produced by a sale are to be paid is regulated by the 25th General Rule, which directs:—

That the costs chargeable against the fund produced by a sale shall be, 1st, such costs of, and consequential on the application for the order for the sale, as the Commissioners shall think fit to allow; 2nd, the expenses of, and incidental to the sale; and 3rd, the costs awarded to any tenant who shall establish a claim for a lease or agreement not set forth in the schedules given by the owner of the land, except such part of the last-mentioned costs as shall be actually recovered under the order of the Commissioners from the owner or person who shall have contested such claim; and the Commissioners may direct the owner or other person contesting such claim to reimburse the fund in any costs awarded to the tenant establishing his claim, and paid to him out of the funds in Court; provided that

nothing herein contained shall preclude the Commissioners from giving costs to an owner, not being the petitioner or party having the carriage of the proceedings, in any case in which it shall appear to be just and reasonable that such owner should be allowed costs.

And the 26th Rule directs :—

That the costs properly incurred by an incumbrancer coming in and proving his incumbrance shall, except where the Commissioners may otherwise direct, rank in point of priority with the incumbrance, in respect of which such costs have been incurred.

The costs of a party proving an incumbrance to rank in priority with demand.

By the 50th General Rule it is ordered :—

That any party introducing any scandalous, prolix, or irrelevant matter into any petition, affidavit, or other document, shall pay the costs incident to such misconduct, and all such scandalous, prolix, and impertinent matter shall be expunged at the expense of such party.

Costs of affidavit containing scandalous, prolix, or irrelevant matter.

The following rules regulate the practice as to the taxation and general course of proceedings in reference to costs :—

Costs.
Regulation for taxation of.

That all costs incurred in proceedings before the Commissioners, or in relation thereto, shall be taxable upon the requisition of any party (without any order referring the same for taxation) by such officer of the Court as the Commissioners shall, from time to time, appoint for that purpose; and it shall be the duty of such officer, if any difficulty shall arise upon the taxation of such costs, to consult the Commissioners, or one of them, in regard thereto. And it shall be lawful for any party dissatisfied with such taxation to apply to the Commissioners by way of appeal from such taxation. But unless notice of such application shall be lodged for service within two days after such costs shall be certified by the officer appointed to tax the same, the taxation thereof shall be conclusive upon all parties, unless the Com-

missioners upon special grounds shall otherwise order.—(71st General Rule.)

Costs may be taxed between attorney and client.

That the officer appointed to tax costs shall be at liberty to tax costs incurred in proceedings before the Commissioners, or in relation thereto, between attorney and client, without any rule or order for that purpose, and it shall be his duty so to do, upon the requisition of the client.—(72nd General Rule.)

Gross sum may be offered by notice in lieu of taxed costs.

That in all cases of costs, whether between party and party, or attorney and client, it shall be competent for the party against whom such costs are claimed, to offer by notice a sum in gross in lieu of such costs. And if the party entitled to such costs shall agree to accept of such sum, the officer appointed for the taxation of costs shall certify the sum specified in such notice as the sum to which he has ascertained such costs; but in case the party entitled to such costs shall refuse to agree to such notice, and shall thereby render it necessary to have such costs taxed, and the same shall be taxed to less than the sum so offered by such notice, the party entitled to such costs shall be charged with the expenses of such taxation, and the same shall be ascertained by the officer, and deducted from the amount of such costs, or an office rule may be obtained for the payment of the same, in case the sum due on such costs shall not be sufficient to cover the amount of such expenses.—(73rd General Rule.)

If costs taxed to less than sum offered, party entitled to costs to be charged with expenses of taxation.

Court may award a gross sum in lieu of taxed costs.

That in any case in which the Court shall award costs to any party it shall be optional with the Court, either to refer the costs to be taxed, or by the order to direct payment of a sum in gross in lieu of taxed costs, and also to direct by, and to whom, such sum in gross shall be paid.—(74th General Rule.)

Rule may be entered for payment of taxed costs on production of certificate.

That in any case in which costs are directed to be paid by any order, and the same be subsequently taxed or ascertained, the party entitled to such costs may, upon production of the said order, and the officer's certificate of the amount thereof, have an office rule entered for the payment of the same.—(75th General Rule.)

Bills of costs to be retained in office and bound up.

That all bills of costs, whether between attorney and client, or party and party, when taxed, shall be retained in the office; and at the end of every term, all such bills of costs taxed since the previous

term shall be bound up in one or more volumes, with proper indexes, and to that end the costs for taxation shall be written on post paper, bookwise, with a sufficient margin; and in taxing any subsequent costs in the same cause or matter, regard shall be had to the preceding bills, so as to ascertain that none of the items charged were included in any previous bill; but no inspection shall be given of any bills of costs lodged in the office between attorney and client, except to the attorney or client, or their respective agents, without the special order of the Court.—(76th General Rule.)

Inspection of, where not allowed.

That on the taxation of costs, no sum shall be allowed for the attendance of counsel, on a reference before a Commissioner, unless such Commissioner shall have entered in his book, his approbation of the attendance of such counsel.—(77th General Rule.)

Costs of attendance of counsel when allowed.

There have been very few questions, as yet, raised upon the subject of costs. It has been shown that there is a by-rule of the 10th January, 1850 (nearly similar to the 77th General Rule), by which the costs of the appearance by counsel in Chamber motions will only be allowed, when the necessity for such appearance has been certified by the Commissioner; and that in such cases the costs of the appearance of but one counsel will be allowed; and that upon motions for the carriage of the proceedings the costs of but one counsel will be allowed, unless the Commissioner certify in favour of the attendance of a second; also that no fee will be allowed against the fund for counsel in settling the draft of an affidavit or other document filed as cause against a conditional order.—*In re Jennings's Estate*, p. 69.

Costs of appearance by counsel in chamber motions not allowed, unless Commissioner certifies for them. And appearance of but one counsel allowed. On motion for carriage of proceedings, Court may certify for attendance of two counsel. No fee allowed to counsel on settling draft affidavit or other document as cause against conditional order.

The Commissioners will give the costs of preparing to resist a motion, of which notice was served by the

Costs of preparing to resist motion

if withdrawn, given up to time of withdrawal.

Solicitor personally responsible for costs, if he proceeds for married woman as a *feme sole*.

Or for an insolvent debtor, without disclosing insolvency.

Costs of application for liberty to bid are purchaser's costs.

No application for sale, unless costs of previous application paid.

And petition must show that costs paid.

Fee to counsel on settling petition.

Costs of proceedings where owner relies on 22nd Section.

other side and withdrawn, down to the time of withdrawal.—*In re Scott*.

Where a solicitor presents a petition, or takes other proceedings for a married woman under the 38th Section of the Act, he will be held personally liable for the costs, unless he proceeds by a next friend of the married woman.—*In re W. H. Knox*, 2 I Jur., 147.

And if a solicitor presents a petition by a party who had filed his petition as an insolvent debtor, although not discharged as an insolvent, and does not disclose the circumstance of the insolvency, he will be held personally responsible for the costs.—*In re Nisbett*, 2 I. Jur., 253.

The costs of an application by a petitioner, or other party, for liberty to bid at sale, are purchasers' costs, and will not be allowed against the fund.

Where an application for the sale of any land or lease has been dismissed with costs by a competent tribunal, no application by the same party can be entertained by this Court, unless it is shown that costs have been paid. Sec. 18.

And the petition for a sale must show that such costs were paid, *ante*, p. 39.

In costs of perusing and settling petition, a fee to counsel will always be allowed, *ante*, p. 43.

Where the owner relies on the 22nd Section as cause against a sale, a reference may be directed to one of the Commissioners to ascertain yearly profits of estate, and the costs of the proceedings will be ordered to abide the result, *ante*, p. 69.

The costs of a case to counsel, to advise upon the cause shown, not allowed, *ante*, p. 70. Costs of case to counsel.

Where cause is shown by a party, and the solicitor for the petitioner does not, within four days after the expiration of the time limited by the conditional order, serve notice of a motion to make the order absolute, notwithstanding cause; the party showing cause will be entitled to enter a side-bar rule directing the cause shown to be allowed with costs, and referring them to the officer to tax, *ante*, p. 70. Costs of showing cause when allowed.

Any party having in his possession abstracts of title, copies of deeds, rental, maps, or surveys, or other papers which might be made available in the proceedings in this Court, and which have not been previously paid for, may be lodged, and the costs of them will be allowed, *ante*, p. 101. Costs of documents lodged by parties.

After the sale the solicitor having the carriage of the proceedings may obtain an order for payment of the costs out of pocket, *ante*, p. 187. Payment of costs out of pocket.

The solicitor for the party having the carriage of the proceedings is not entitled to a fee, upon approving of the purchaser's draft conveyance, from the purchaser; but if the draft be carefully settled, the Commissioner will endorse in fold his approbation of it, and a fee of £1 1s. will be allowed to the solicitor in his costs in the matter, *ante*, p. 206. Fee on approval of draft conveyance allowed.

Where the purchaser is discharged from his purchase by reason of misrepresentations in the rental, he will be entitled to be repaid his purchase money, with 5 per cent. interest, and his costs, including costs of application for his discharge, *ante*, p. 215. Costs of purchaser when discharged.

Costs of proceeding for partition.

Costs properly incurred in proceedings for a partition, including costs of surveys and advertisements, must be borne by owners of respective estates, in proportion to their respective shares; and the amount paid by the owner having a limited interest, shall be a charge in his favour upon the inheritance, *ante*, p. 270.

Costs of proceedings for exchange or division.

Costs properly incurred in proceedings for an exchange or division, are in the Commissioner's discretion, having regard to any special agreement between the parties; and the amount paid by the owner having a limited interest will be a charge on the inheritance, *ante*, p. 274.

CHAPTER XXI.

ASSIGNMENT OR CHARGE UPON FUND PENDING PROCEEDINGS.—WHERE GUARDIAN APPOINTED.—PERIODICAL EXAMINATION OF MATTERS BY COMMISSIONERS.—EXAMINATION OF WITNESSES.—MONEY AND STOCK.—BANK OF IRELAND.

IN the preceding pages will be found *every* important provision of the Statute, and *every general* and *by-rule* and *form*, to which, in the practice of the Court, solicitors will have occasion to refer. There are some of the General Rules, which do not appear to be precisely or exclusively applicable to any of the matters already considered, and to which attention may be directed.

Where any assignment, or charge, or other disposition of any fund in the hands of the Commissioners, or of the interest of any person therein, has been made, a notice in writing should be lodged in the office, stating particularly the fund to which the same relates, and the name of the person whose interest therein is affected, and the name of the party so claiming to be interested in such charge, and some place where notice may be served on such party.—(*General Rule*, 35.)

Notice in writing of assignment or mortgage of funds produced by sale.

This rule appears to be intended to apply to cases *How given.* where there is no *registered* assignment, mortgage of, or charge upon a demand, or where, *after* the searches shall

have been made, there may be executed an assignment, mortgage, or charge, upon a demand payable out of the proceeds of the sale, the party interested should give notice thereof. The proper course would seem to be for such party to lodge a claim in the matter, and he will get due notice of the proceedings preparatory to the allocation of the funds.

The following General Rule (46th) provides for cases where the Commissioners shall have appointed a guardian under the 48th Section, *ante*, p. 6.

Order appointing any person to be guardian to be served, and may be rescinded.

That whenever the Commissioners shall appoint any person to act in the nature of a guardian, or next friend, to protect the rights of any infant, idiot, lunatic, or married woman, in any matter depending before them, the order made by the Commissioners to that effect shall be served upon such person, and all notices and orders subsequently served upon such person shall be deemed to have been duly served upon the party whose interest such person has been so appointed to protect. But it shall be competent for any person interested, or claiming to be interested, to apply to the Commissioners to rescind or vary the order, appointing such guardian, or next friend, or to have some other person appointed in his place.

There is a General Rule regulating periodical examinations by the Commissioners of the proceedings in each matter, and in some cases the result of the examination may be of service, where parties bringing estates into this Court lie by either from neglect or design. The rule is the 48th ; it directs :—

Commissioners may examine state

That the Commissioners, or one of them, shall, in the first week of each month, from November to August inclusive, examine the state

of each matter, and the proceedings which may have taken place since such last examination; and if any matter shall appear not to have been prosecuted with due diligence, they shall require the party having the carriage thereof to explain the reason of such neglect or delay, and if such reason shall not appear satisfactory, they shall be at liberty to order the carriage of such matter to be transferred to some other party interested in such matter, who shall undertake to prosecute the same with due diligence, and shall order the costs occasioned by such transfer to be paid by the party guilty of such delay, and shall order all papers and documents relating to the proceedings in such matter, which were in the custody, power, or procurement of the petitioner, or party having the carriage of the proceedings, or his attorney, to be handed over to such other party, or lodged in the Court, as the Commissioners shall direct; and no petition shall be withdrawn or dismissed without the leave of the Commissioners.

of matters periodically.

And may transfer carriage of proceedings.

The only remaining General Rules not referred to, or appearing in the foregoing pages, are those relating to the examination of witnesses *vivâ voce* and upon *interrogatories*, and the General Rules regulating the proceedings between the Commissioners, the Bank of Ireland, and the Stock Brokers in respect of the money or stock.

General Rules as to examination of witnesses, and money and stock lodged in Bank of Ireland.

The rules relating to the examination have not as yet been called into use, and it is improbable that they will be required; at all events, until the expiration of the three years allowed by the Act for the presentation of petitions and the completion of the sales; when these events have occurred, possibly the Commissioners may, where funds remain in their hands in litigated matters, proceed to exercise their functions as a Court of Equity, and examination by interrogatories may become necessary; but until then, these rules will probably be useless.

The rules in relation to the examinations will be found from Nos. 51 to 62, and those applicable to the course of proceeding between the Commissioners and the Bank from Nos. 78 to 85, amongst the General Rules of the Court.

THE ACT,

12TH & 13TH VICT., CHAP. 77,

ENTITLED,

“ An Act further to facilitate the Sale and Transfer of Incumbered Estates in Ireland. [28th July, 1849.] ”

WHEREAS it is expedient that further facilities should be given for the sale and transfer of incumbered estates in *Ireland*: Be it enacted, therefore, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for her Majesty, by warrant or warrants under the royal sign manual, to appoint any number of persons not exceeding three to be Commissioners under this Act during her Majesty's pleasure, and upon every vacancy in the office of any such Commissioner in like manner to appoint some other person to such office, and the said persons so to be from time to time appointed shall be Commissioners for the execution of this Act, and shall be styled “The Commissioners for Sale of Incumbered Estates in Ireland.”

Secs. 1, 2.

Three Commissioners to be appointed under sign manual.

2. And be it enacted, That the Commissioners shall cause to be made a seal for their commission, and shall cause to be sealed therewith all orders, conveyances, and other instruments made by or proceeding from the Commissioners in pursuance of this Act, and all such orders, conveyances, and other instruments or copies thereof, purporting to be sealed with the seal of the Commissioners, shall be received in evidence without any further proof thereof.

Commissioners to have a common seal.

Secs. 3-8.

Two Commissioners to be a quorum.

Power to appoint and remove secretary, clerks, &c.

Appointments under this Act limited to five years.

Salaries to be paid out of monies to be provided by parliament.

Commissioners not to sit in House of Commons.

Oath of Commissioners.

3. And be it enacted, that all acts, matters, and things which the Commissioners are by any of the provisions of this Act required or authorized to do or execute shall and may be done and executed by any two of such Commissioners.

4. And be it enacted, that it shall be lawful for the Commissioners, from time to time (with the consent in every case of the Commissioners of her Majesty's Treasury), to appoint a Secretary, and such clerks, messengers, and officers as they shall deem necessary for the purposes of this Act, and to remove such Secretary, clerks, messengers, and officers, or any of them.

5. And be it enacted, that no Commissioner, Secretary, or other officer to be appointed as aforesaid shall hold his office for a longer period than five years next after the day of the passing of this Act, and thenceforth until the end of the then next session of parliament.

6. And be it enacted, that it shall be lawful for the Commissioners of her Majesty's Treasury to direct a salary not exceeding three thousand pounds by the year to be paid to one of the said Commissioners, and a salary not exceeding two thousand pounds by the year to each of the other Commissioners for the time being appointed under this Act; and the salaries of the Secretary, clerks, messengers, and other officers to be appointed under this Act shall be from time to time regulated by the Commissioners of her Majesty's Treasury; and the salaries of such Commissioners, Secretary, clerks, messengers, and officers as aforesaid, and all other incidental expenses of carrying this Act into execution not herein otherwise provided for, shall be paid out of such monies as shall be provided by parliament.

7. And be it enacted, that no Commissioner appointed under this Act shall during his continuance in such office be capable of being elected or of sitting as a member of the House of Commons.

8. And be it enacted, that every Commissioner appointed under this Act shall, before he enters upon the execution of his office, take the following oath before one of the Justices of the Court of Queen's

Bench or Common Pleas, or one of the Barons of the Court of Exchequer in *Ireland*; (that is to say,) Secs. 9, 10.

‘I, A. B., do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, fulfil all the powers and duties of a Commissioner under an Act passed in the twelfth year of the reign of Queen Victoria, intituled [*here set forth the title of this Act.*’]

And the appointment of every such Commissioner, with the time when and the name of the Justice or Baron before whom he shall have taken the said oath, shall be forthwith published in the *Dublin Gazette*.

9. And be it enacted, that the Commissioners shall frame, and cause to be printed and circulated or promulgated, as they shall see occasion, forms of application and directions indicating the particulars of the information to be furnished to the Commissioners on application to them under this Act, with reference to title, incumbences, and the circumstances of the land, and such other information as in the judgment of the Commissioners may assist them in forming an opinion on such application, and also such other forms and directions as the Commissioners may deem requisite or expedient for facilitating proceedings under this Act. Commissioners to frame and promulgate form of application, &c.

10. And be it enacted, that the Commissioners shall from time to time make such General Rules as they may think best adapted for regulating the course of procedure under this Act, and for securing the prompt and due distribution and payment of the monies received upon sales under this Act amongst or for the benefit of the persons entitled thereto, and for the protection in respect of such monies of the interests of persons under disability and of future interests, and generally for securing the due execution of the powers vested in the Commissioners under this Act, and giving effect to the provisions and objects of this Act; but no fees or sums shall, under any such General Rule or otherwise, be payable to any officers or persons appointed under this Act upon or in respect of any proceedings under this Act, save, in respect of any copy or extract of or from any order, document, or proceeding actually required and taken by any Commissioners to make General Rules for regulating proceedings under this Act.
No fees to be payable on proceedings.

Secs. 11, 12. party, such sum, not exceeding three half-pence for every ninety words, as shall be paid for the making of such copy or extract, and the Commissioners shall authorise to be charged to such party for the same: Provided that every such General Rule shall be laid before her Majesty's Privy Council of *Ireland*, and it shall be lawful for such Privy Council, by order signed by six of the said Privy Council, to confirm or disallow any such rule, or to alter or amend, and confirm with alteration or amendment, any such rule, or to remit any such rule to the Commissioners for further consideration; and every such General Rule (when the same shall have been confirmed by order of the said Privy Council) shall be enrolled in the High Court of Chancery in *Ireland*, and when so enrolled shall be binding on the Commissioners in the exercise of their powers, and shall be of the same force and effect as if the same had been enacted by authority of Parliament: Provided always, that any rules so confirmed and enrolled as aforesaid may from time to time be rescinded, amended, or altered as occasion may require by other rules made by the Commissioners, and confirmed and enrolled in like manner.

Rules to be laid before the Privy Council of Ireland.

Rules when confirmed by Privy Council, and enrolled in Chancery, to have the force of an Act of Parliament.

Rules may be altered.

General Rules to be laid before Parliament.

Power to Commissioners to summon witnesses, &c.

11. And be it enacted, that all such General Rules as shall be made and confirmed as aforesaid shall be laid before both Houses of Parliament within one calendar month from the confirmation thereof, if Parliament be then sitting, or if Parliament be not then sitting, within one calendar month from the commencement of the then next session of Parliament.

12. And be it enacted, that it shall be lawful for the Commissioners by summons under their seal to require the attendance before them, at a time and place to be mentioned in such summons, of all such persons as they shall think fit to examine in relation to any question or matter depending before them, and to require all such persons to produce before them all deeds, books, papers, documents, and writings relating to such question or matter, and to examine upon oath, or, in the case of persons allowed to make affirmation or declaration in lieu of an oath, upon affirmation or declaration (as the case may require), all persons who shall attend under such summons, and all persons who shall voluntarily attend before them

as witnesses; and it shall be lawful for any of the Commissioners to administer such oath, affirmation, or declaration; and every person required by such summons to attend before the Commissioners, who, without reasonable cause, to be allowed by the Commissioners, shall fail to appear according to the tenor of such summons, or shall refuse to be sworn or to make affirmation or declaration (as the case may be), or shall not make answer to all such questions as shall be lawfully put to him by the Commissioners, or shall fail to produce before the Commissioners any such deed, book, paper, document, or writing, being in or under his custody, possession, or power, as shall be lawfully required to be produced by him before the Commissioners, shall for such default of appearance, refusal to be sworn or to make affirmation or declaration, or for not answering any such question as aforesaid, or not producing such deed, book, paper, document, or writing, incur and be liable to all such penalties, prosecutions, actions, and suits as a person might incur or be liable to for failing to appear, or refusing to be sworn or to give evidence, in any suit or matter depending in the High Court of Chancery in *Ireland*; and the Commissioners shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons summoned as aforesaid, for punishing persons failing to appear, or refusing to be sworn or to make affirmation or declaration or to give evidence, or guilty of contempt, and generally for enforcing all orders made by the Commissioners under any of the powers or authorities vested in them under this Act, and otherwise in relation to the matters to be inquired into and done by them under this Act, as are by law vested in the High Court of Chancery in *Ireland* for such purposes in relation to any suit or matter depending in such Court.

13. Provided always, and be it enacted, that the Commissioners may, where they think fit, receive in evidence affidavits; and such affidavits may be made before any person empowered to take affidavits which may be received in evidence in the Court of Chancery in *Ireland*, or, where they think fit, the Commissioners may by Order under their seal appoint and authorise any person to take affidavits, or to examine any witness or witnesses who shall attend before such

Power to Commissioners to proceed upon affidavits, and to appoint persons to take affidavits and examinations.

Secs. 14, 15. person to be examined, in *Ireland* or elsewhere, in relation to any application to or matter pending before the Commissioners, and to administer oaths, affirmations, or declarations for the purposes of such examination.

Orders of Commissioners may be enforced in England.

14. And be it enacted, that every order made by the Commissioners under this Act, a copy whereof shall be certified under their seal to the High Court of Chancery in England, may be enrolled in like manner and enforced by the like process as an order for payment or for accounting for money made by the High Court of Chancery in Ireland, a copy whereof is exemplified and certified to the said Court of Chancery in England under the great seal of Ireland, may be enrolled and enforced under an Act passed in the forty-first year of **41 G. 3, c. 90.** King George the Third, intituled "An Act for the more speedy and effectual recovery of debts due to his Majesty, his heirs and successors, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better administration of justice within the same."

Commissioners to be a Court of Record, and have the jurisdiction of a Court of Equity, and may refer any inquiries, &c., to any one Commissioner.

15. And be it enacted, that the Commissioners shall be a Court of Record, and shall have all the powers, authority, and jurisdiction of a Court of Equity in *Ireland* for the investigation of title, and for ascertaining and allowing incumbrances and charges and the amounts due thereon, and settling the priority of such charges and incumbrances respectively, and the rights of owners and others, and generally for ascertaining, declaring, and allowing the rights of all persons in any land or lease in respect of which application may be made under this Act, or in the money to arise from sales under this Act; and shall have the like authority and jurisdiction for enforcing, rescinding, or varying any contract for sale made under this Act, and in other matters incident to or consequent on a sale under this Act, as are vested in a Court of Equity in relation to a sale under the direction of such Court; but their procedure shall be according to such General Rules as aforesaid, or, where the General Rules shall be inapplicable, at the discretion of the Commissioners; and the Commissioners shall have power, in relation to any matter or question before them, to send cases for the opinion of a Court of Law, and to direct issues of

fact to be tried by a jury; and, subject to any such General Rules as aforesaid, the Commissioners may refer to any one of such Commissioners any such inquiries and matters as they may think fit, and such one Commissioner shall, for all the purposes of this Act, have in relation to all such inquiries and matters as shall be so referred to him, the like powers, authorities, and jurisdiction as the Commissioners, or any two of them, would have under this Act. Secs. 16-19.

16. And be it enacted, that where land in *Ireland*, or a lease in perpetuity, or any lease for a term whereof not less than sixty years shall be unexpired at the time of such application as hereinafter mentioned, or any Church or College lease of land in *Ireland*, shall be subject to any incumbrance, it shall be lawful for the owner of such land or lease, within three years from the passing of this Act, to apply to the Commissioners for a sale of such land or lease under the provisions of this Act. Where land or lease of land in *Ireland* is subject to incumbrance, owner may apply to Commissioners for a sale.

17. And be it enacted, that where any land in *Ireland*, or any such lease as aforesaid of land in *Ireland*, shall be subject to any incumbrance, it shall be lawful for any incumbrancer on such land or lease, within three years from the passing of this Act, to apply to the Commissioners for a sale, under the provisions of this Act, of the whole or part (as in the judgment of the Commissioners may appear necessary) of such land or lease, for the purpose of discharging the incumbrances thereon. Incumbrancer may apply to Commissioners for sale for discharging the incumbrances.

18. And be it enacted, that where application for a sale of any land or lease has been dismissed with costs by a competent tribunal, no application by the same party for a sale of such land or lease, or any part thereof, shall be entertained by the Commissioners, unless it is shown that such costs have been paid. No application to be entertained unless costs of any previous application paid.

19. Provided always, and be it enacted, that for the purpose of authorizing an application for a sale under this Act, the land shall not be deemed subject to an incumbrance where the same shall not affect the inheritance, unless such incumbrance shall affect a term of not less than fifty years absolute unexpired, or a greater estate in such land, and shall have been created by the owner of an estate of inheritance, or by a person who, but for an act which is void against or postponed at Law or in Equity to such incumbrance, would be the Where lands or lease not to be deemed subject to incumbrance.

Secs. 20, 21. owner of an estate of inheritance, but an incumbrance charged under a power created by the owner of an estate of inheritance shall be deemed to have been created by such owner; and such lease in perpetuity or other lease as aforesaid shall not be deemed subject to an incumbrance where the same shall affect a derivative estate or interest only, or less than the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, unless such incumbrance shall have been created by the owner of or person entitled to the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, or by a person who, but for an act which is void against or postponed at Law or in Equity to such incumbrance, would be such owner or so entitled, but any incumbrance charged under a power created by the owner of or person entitled to such whole estate as aforesaid shall be deemed to have been created by such owner or person so entitled.

When incumbrance subject to limitations, the first person entitled, &c. to make application.

20. And be it enacted, that when any incumbrance shall be subject to any limitations of estate or interest, or shall be held upon any trust, the Commissioners may proceed and act upon an application or consent under this Act made or given in respect of such incumbrance by the first person entitled to the income of such incumbrance, or by any trustee thereof, or other person whose estate or interest in the incumbrance appears to the Commissioners sufficient to enable him properly to apply or consent in respect of the interests of the parties interested in the incumbrance.

Commissioners, upon application for sale, may after notices and hearing, direct a sale.

21. And be it enacted, that if upon any application for a sale under this Act, or upon any information or evidence which may be required by and produced to the Commissioners in relation to the matter of such application, it shall appear to the Commissioners that a sale of the land or lease to which the application may relate, or any part thereof, may be found to be expedient, they shall direct notices to be given to such persons and in such manner as they think fit, and shall, where any parties interested in the land or lease apply to them for that purpose, hear such parties, by themselves, their counsel or agents, and shall, so far only as may be necessary to enable them to determine whether, under all the circumstances, it is expedient that a sale of all or any part of the land or lease should be made, investigate the title

and the incumbrances affecting the land or lease, and the state and circumstances of the land, or of the land comprised in the lease, and if it shall in their opinion be expedient that such a sale should be made, may, at their discretion, make an order for the sale of all or any part of such land or lease. Secs. 22, 23.

22. Provided always, and be it enacted, that the Commissioners shall not make an order for sale of any land or lease, or any part thereof, upon application by an incumbrancer on such land or lease, in case it be shown to the satisfaction of the Commissioners, by the owner of such land or lease, that no part of such land or lease is subject to any receiver or in the possession of any incumbrancer, and that the amount of the yearly interest on the incumbrances and other yearly payments (if any) in respect of charges payable out of the income of such land or lease, and the other lands or leases (if any) subject to the incumbrance of such incumbrancer, do not exceed one half of the next yearly income (after the payment of all tithe rent-charge, such part of the county cess and poor's rate as is payable by the owner, and all crown, quit, and head rent,) of such land or lease, or of all the lands or leases so subject: provided always, that the decision of the said Commissioners thereupon shall in all cases be final and conclusive to all intents and purposes whatsoever.

23. And be it enacted, that where a sale shall be made under this Act the Commissioners shall, where and so far as they may deem necessary for the purposes of such sale, ascertain the tenancies of the occupying tenants, and of any lessees or under-lessees whose tenancies, leases or under-leases, affect the land or lease, or part thereof, to be sold, and may give such notices and make or cause to be made such inquiries as they shall think necessary for ascertaining and securing the rights of such tenants, lessees, or under-lessees as aforesaid; and all occupying tenants, and all persons being or claiming to be lessees or under-lessees as aforesaid shall, at such times and places as the Commissioners may by their notices require, produce all leases, under-leases, and agreements in writing under which such tenants or persons occupy or claim to hold, if such leases, under-leases, or agreements, or counterparts thereof, be in their possession or power, and where they occupy or claim to hold under leases, under-leases, or agreements in writing

Commissioners not to make order for sale on application by incumbrancer where the interest and annual payments on charges do not exceed half the net income.

*Repealed
16/17/20
s. 2 & other
provisions*

Tenancies, &c. to be ascertained.

Sec. 24.

Sale may be made subject to an annual charge.

not in their possession or power, or under parol agreements or lettings, they shall deliver, at such times and places as aforesaid, particulars of the terms and conditions upon and subject to which they occupy or claim to hold; and the sale shall be made subject to the tenancies, leases, or under-leases, ascertained as aforesaid, and subject to which the owner or incumbrancer applying for a sale under this Act shall be owner or incumbrancer, and such other of the tenancies, leases, and under-leases, ascertained as aforesaid, as shall appear to the Commissioners to have been granted *bonâ fide* by the owner or person in possession or in receipt of the rents and profits, and subject to which it shall appear to the Commissioners the sale should be made, save such (if any) of such respective tenancies, leases, and under-leases as, with consent as hereinafter mentioned, shall be included in such sale, and, where the Commissioners think fit, be made subject to any leases, under-leases, or tenancies, according to any general description or subject to any condition concerning any leases, under-leases, or tenancies, the nature of which shall not have been ascertained or shall be disputed; and, when the Commissioners shall think fit, such sale may be made subject to any annual charge affecting the land or lease, or part thereof, sold, or to any such apportioned part of such annual charge as the Commissioners may think fit should remain charged thereon; and where such land or lease, or part thereof, is subject to any incumbrance under the terms of which the incumbrancer cannot be required to accept payment of the principal money before the expiration of a term of years unexpired, such sale may, if the Commissioners think fit, be made subject to such incumbrance.

Sale to be under direction of Commissioners.

24. And be it enacted, that where the Commissioners make an order for sale, the land or lease, or part thereof, to which such order shall relate, shall be sold, by or under the control and direction of the Commissioners, by public sale or private contract, together or in lots or parcels, at such time and place and generally in such manner as the Commissioners think fit; and the conveyance or assignment of the land or lease, or part thereof, shall be made by the Commissioners under their seal, and shall be signed by two of the Commissioners, and the execution by any other party of such conveyance or assignment shall be unnecessary; and such conveyance or assignment shall express

Execution by Commissioners sufficient.

or refer to the tenancies, leases and under-leases (if any), and charge (if any), subject to which the sale is made, and may be in the form contained in the schedule to this Act, or to the like effect, with such limitation of uses and other additions or variations as, with the approval of the Commissioners, the purchaser may direct. Secs. 25, 26.

25. And be it enacted that the purchase money in every case shall be paid into the Bank of *Ireland*, to an account to be there opened in the name of the Commissioners, and to the credit in each case of the estate sold, or as the Commissioners by General Rule or special order shall direct; and on the notification by the said bank to the Commissioners of the receipt of the money, a certificate by the Commissioners of such payment shall be endorsed on or written at the foot of the conveyance or assignment; and on such payment into the bank the purchaser shall be discharged from all liability in respect of the application of the money so paid, and such certificate of the Commissioners shall be evidence of such payment. Payment of purchase money.

26. Provided always, and be it enacted, that it shall be lawful for any incumbrancer on, or person otherwise interested in any land or lease, or part thereof (other than the incumbrancer or owner upon whose application the sale has been ordered), to bid at any public sale, and to become the purchaser at any public sale or by private contract, in like manner as any person not interested therein might bid and become the purchaser; and, by leave of the Commissioners, it shall be lawful for the incumbrancer or owner on whose application the sale has been ordered to bid and become the purchaser; and where an incumbrancer on any land or lease, or part thereof, shall be the purchaser of such land or lease, or part thereof, the Commissioners may, where they think fit, authorise such purchaser to retain out of the purchase money the amount which might have been ordered to be paid thereout in respect of such incumbrance, in case the whole purchase money had been paid into the Bank of *Ireland* under this Act, or such sum on account of such amount as the Commissioners may think fit, and to pay the residue only of the purchase money into the said bank; and where at the time of authorising such retainer as aforesaid the Commissioners shall not finally have Where an incumbrancer purchases, Commissioners may authorize payment into the bank of balance of purchase money, after retaining amount of incumbrance.

Sec. 27. ascertained and determined the priority and rights of such purchaser in respect of his incumbrance, and the amount which he would be entitled to be paid in respect thereof out of the purchase money, such retainer shall be without prejudice to the power of the Commissioners to require such purchaser to pay into the said bank the whole or any part of the amount so retained which ought to be so paid by him; and the Commissioners shall withhold their certificate of payment herein-before mentioned until they shall be satisfied that the full purchase money, less the amount which such purchaser would be entitled to be paid in respect of his incumbrance, has been paid into the said bank.

Effect of
assurance.

27. And be it enacted, that every such conveyance, executed as aforesaid by the Commissioners upon the sale of land, shall be effectual to pass the fee simple and inheritance of the land thereby expressed to be conveyed, subject to such tenancies, leases, and under-leases as shall be expressed or referred to therein as aforesaid, but, save as aforesaid and as herein-after provided, discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whomsoever; and every such conveyance or assignment, executed by the Commissioners upon the sale of a lease in perpetuity or other lease, shall be effectual to pass the estate created or agreed to be created by such lease and then remaining unexpired, subject to the rent and covenants annexed to the reversion expectant on the determination of such lease, and to such tenancies, leases, and under-leases as shall be expressed or referred to in such conveyance or assignment, but, save as aforesaid and as herein-after provided, discharged from all rights, titles, charges, and incumbrances whatsoever affecting the leasehold estate or interest: Provided that where any land or lease, or part thereof, shall be sold and conveyed or assigned subject to any annual charge or apportioned part thereof, such annual charge or such apportioned part thereof only (as the case may be) shall remain and be charged on and payable out of such land or lease or part thereof, as in the conveyance or assignment shall be expressed.

28. Provided always, and be it enacted, that any such conveyance or assignment as aforesaid shall not prejudice or affect any right of common, or any right of way or other easement, or any rentcharge in lieu of tithes, crown rent, or quit rent, charged upon or issuing out of any land, or any charge made by virtue of an Act passed in the sixth year of her Majesty, intituled "An Act to promote the Drainage of Lands, and Improvement of Navigation and Water Power in Connexion with such Drainage," in Ireland, and the Acts amending the same, or by virtue of an Act passed in the tenth year of her Majesty, intituled "An Act to facilitate the Improvement of Landed Property in Ireland," save where the Commissioners shall think fit to redeem the crown rents or quit rents, or to pay off or redeem the charges under the said Acts or either of them, under the power herein-after contained, and shall express in such conveyance or assignment that the land conveyed or assigned thereby is so conveyed or assigned discharged of all crown rents or quit rents, or charges under the said Acts or either of them, as the case may be, and in such case such land shall be so discharged accordingly.

Secs. 28-30.
Saving of right of common, &c.
5 & 6 Vict. c. 89.
10 & 11 Vict. c. 32.

29. And be it enacted, that the Commissioners shall have power to order the delivery to the purchaser, or as he shall direct, of all leases or counterparts of leases and agreements, and other evidences of the tenancies subject to which the sale shall be made, affecting the land or lease, or part thereof, sold, and shall, on the application of any purchaser, issue an order to the Sheriff to put such purchaser in possession of all lands not in the occupation of lessees, under-lessees, or tenants subject to whose leases, under-leases, or tenancies the sale shall have been made, and who shall have attorned to such purchaser within a time to be limited in such order, and such order shall be executed by the Sheriff in like manner as a writ for the delivery of possession.

Commissioners may order delivery of counterparts of leases, &c. and possession to purchaser.

30. And be it enacted, that the Commissioners shall, out of the purchase money to be received on the sale of any land or lease, or part thereof, under this Act, allow and pay such costs of and consequential on the application for the order for the sale as they shall

Application of purchase money.

Secs. 31, 32. think fit, and the expenses of and incidental to the sale; and the surplus of such purchase money, after payment of such costs and expenses, shall, under the order of the Commissioners, be applied in or towards payment or satisfaction of the incumbrances or charges which affected such land or lease, or part thereof, according to their priorities, and shall, subject as aforesaid, be paid to the owner previously to such sale of such land or lease, where such owner was absolutely entitled thereto, or, where not so entitled, be laid out in the purchase of land which shall be limited and settled to the same uses, upon the same trusts, for the same purposes and in the same manner as the land or lease, or part thereof, sold, stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; and until such money can be so laid out it may, under such order as aforesaid, be transferred or paid over to trustees to be appointed or approved by the Commissioners, for the purpose of being so laid out as aforesaid, with such power for the investment thereof in Government stocks, funds, or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Commissioners shall think fit.

Money paid
into bank
may be in-
vested in the
Funds.

31. And be it enacted, that any money so paid into the bank as aforesaid may by order of the Commissioners be invested in their name in the purchase of any stocks, funds, or annuities transferable at the Bank of Ireland; and, until the same shall be sold by order of the Commissioners for the purposes of this Act, the dividends thereof shall from time to time be applied, under the order of the Commissioners, in like manner as the rents of the land or lease, or part thereof, from the sale whereof the money invested in such stocks, funds, or annuities has arisen would have been applicable.

Appoint-
ment of new
trustees.

32. And be it enacted, that whenever the Commissioners shall appoint or shall direct the appointment of trustees for any of the purposes of this Act it shall be lawful for the Commissioners to make or to direct to be made such provision as they shall think fit for the appointment of new trustees, on any event to be determined by the Commissioners.

38. Provided always, and be it enacted that no payment under this Act towards discharge of what shall be due on any incumbrance or charge, not being payment in full, shall prejudice or affect any right or remedy of the incumbrancer or the person entitled to the charge in respect of the balance, otherwise than as against the land or lease, or part thereof, sold under this Act; and no payment under this Act of or in respect of any incumbrance or charge shall impair any right or equity of any persons out of whose estate such payment shall be made to be reimbursed or indemnified by any person or out of any other land or estate, except so far as the Commissioners under any special circumstances shall order.

Secs. 33, 34.

No payment not being in full, to affect right of incumbrancer for balance, and no payment in respect of any incumbrance to impair remedy over.

34. And be it enacted, that it shall be lawful for the Commissioners to sell any land or lease, or part thereof, discharged from any crown rent or quit rent which they may be enabled and may, with the consent of the owner, think fit to purchase, or from any charge made by virtue of the said Acts of the sixth year and tenth year of her Majesty, or either of them, which they may, with such consent, think fit to pay off or redeem; and in any such case the Commissioners shall, out of the money arising from the sale, and in preference to all other payments thereout, pay the consideration for the purchase of such crown rent or quit rent, or such sum as may be necessary for paying off or redeeming such charge; and it shall be lawful for the Commissioners, where they think fit, to pay to any person entitled to any annual or other charge, not being an incumbrance according to the definition of this Act, who may consent to accept the same, a gross sum in discharge or by way of redemption thereof or of a part thereof, and where a part only of any land or lease subject to any incumbrance or charge is sold, to charge the part not sold with such incumbrance or charge or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable or authorize persons to release the money arising from the part so sold from any incumbrance or charge, or to relinquish their claim on such money in respect thereof, without impairing or affecting such incumbrance or charge as to the remaining part of the land or lease originally charged; and the Commissioners, where they think fit, may invest or provide for the investment of money to meet

Commissioners may make provision as to incumbrances, charges, &c., to facilitate sales, &c., and distribution of purchase money.

Sec. 35.

any annual or periodical charge, or any other charge, incumbrance, or interest, where, by reason of such charge, incumbrance, or interest being contingent or otherwise, it shall appear to the Commissioners proper or expedient so to do, and otherwise may make such orders and directions for applying the money arising from any sale in such manner as will secure the convenient application thereof for the benefit and according to the rights of the parties interested in the land or lease, or part thereof, from the sale of which the same shall have arisen.

Power to Commissioners to order money to be paid into Court of Chancery or Exchequer.

35. And be it enacted, that where any money arising from a sale under this Act is not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Commissioners think it expedient for the protection of the rights and interests therein, the Commissioners may order such money, or any stocks, funds, or securities in which the same may have been invested under this Act, to be transferred to the account of the Accountant-General of the High Court of Chancery or of the Court of Exchequer in Ireland, or (where the case may require) of the High Court of Chancery in England, in the matter of the parties interested in the same, to be described as the Commissioners shall think fit and direct, in trust to attend the orders of such respective Courts; and the Commissioners may, by their order, declare the trusts affecting such money, stock, funds, or securities, so far as they have ascertained the same, or state (for the information of the respective Court) the facts or matters found by them in relation to the rights and interests therein; and the High Court of Chancery, Lord Chancellor, and Master of the Rolls, in England and Ireland respectively, and the Court of Exchequer in Ireland, may make such orders and give such directions in relation to any such monies, stocks, funds, or securities as shall be so transferred to the account of the Accountant-General of such respective Court as such Court or Judge respectively might make or give in relation to any trust monies, stocks, or securities paid in, transferred, or deposited under the Act passed in the eleventh year of Her Majesty, "For better securing Trust Funds, and for the Relief of Trustees," or the Act of the last Session of Parliament for extending to Ireland the said Act of the

10 & 11 Vict.
c. 96.

eleventh year of Her Majesty respectively ; and no money transferred into the name of the Accountant-General of the Court of Chancery in Ireland, or paid out under this provision under any order of the Lord Chancellor or Master of the Rolls, shall be liable to Usher's poundage. Sec. 36.
11 & 12 Vict.
c. 68.

36. And be it enacted, that where there shall be separate applications to the Commissioners for sales under this Act of any land, and of any lease in the same land, or of two or more leases in the same land, or there shall be such applications for sales of different undivided shares of any land or lease, it shall be lawful for the Commissioners, where they shall see fit so to do, to include, with the consent of the persons by whom such respective applications may be made or prosecuted, and of any other persons whose consent the Commissioners may, under the circumstances, think fit to require, in the same sale, upon such terms as they think fit, such land and lease, or such leases, or such several undivided shares as aforesaid ; and where there shall be separate applications for sales under this Act of any land and of any lease, in other land, or of different lands or leases in different lands, it shall be lawful for the Commissioners where, from the land being intermixed, or from other circumstances, it shall appear to them convenient so to do, to include, with such consent as aforesaid, such land and lease, or lands or leases, in the same sale, upon such terms as they may think fit ; and where any land or lease, or part thereof, subject to any incumbrance, is proposed or ordered to be sold under this Act, it shall be lawful for the Commissioners, upon the application of the owner of any lease or under-lease, or estate in reversion, or other estate or interest whatsoever in the same land (and although such lease, under-lease, estate in reversion, or other estate or interest be not subject to any incumbrance, or would not, if subject to any incumbrance, be subject to be sold under an order of the Commissioners under the provisions herein-before contained), or upon the application of any incumbrancer on any such lease, under-lease, estate, or interest, to include the same, upon such terms as they may see fit, in the sale of the land or lease, or part thereof, so proposed or ordered to be sold as aforesaid ; and all the provisions of this Act applicable to any land or lease subject to any incumbrance, and ordered to be sold under this Act, and to any incumbrance or charge upon such land or

Lands included in different applications, and different interests in the same land may be included in the same sale.

Secs. 37, 38. lease, and to the purchase money arising from the sale thereof, and to the conveyance or assignment thereof, shall, so far as circumstances admit, extend and be applicable to every such lease, under-lease, estate in reversion, or other estate or interest to be so included in the sale; and in every such case as aforesaid the Commissioners shall apportion the purchase money and expenses as they see fit.

If land sold shall be subject to a lease comprising other land, or if part of lease in perpetuity, &c. be sold, Commissioners may apportion the rent.

37. And be it enacted, that if any land or lease to be sold under this Act shall be subject to a lease or under-lease for years or lives comprising other land at an entire rent, it shall be lawful for the Commissioners to apportion the rent between the land to be sold and the remainder of the land subject to such rent; and where it is intended to sell under this Act a part only of any lease in perpetuity or other lease, it shall be lawful for the Commissioners, where they shall think fit, and (having regard to the rights and interest of the owner of the reversion) it shall appear to them just so to do, to apportion the rent reserved by such lease between the land to be sold and the remainder of the land; and the Commissioners shall direct notices of any such intended apportionment as aforesaid to be given to such persons and in such manner as they shall think fit, and shall hear such parties as shall apply to them in relation thereto; and after such apportionment, and after the sale shall be completed, the owners of the reversion in the respective lands shall have the like remedies for the apportioned rents against the lands out of which the same shall be payable, and the owners and occupiers thereof respectively, as were subsisting for the entire rent before such apportionment; and all the covenants, conditions, and agreements of every lease or under-lease, except as to the amount of rent to be paid, shall, as regards the apportioned parts, remain in force in the same manner as they would have done in case no such apportionment had taken place.

Provision for persons under disability.

38. And be it enacted, that where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under this Act, shall be a minor, idiot, lunatic, or married woman, the guardian, committee of the estate, and husband respectively of such person may make such applications, give such consents, do such acts, and be party to such

proceedings, as such persons respectively, if free from disability, Secs. 39-41.
 might have made, given, done, or been party to, and shall otherwise
 represent such person for the purposes of this Act; but a married
 woman entitled for her separate use (with or without power of anti-
 cipation) shall, for the purpose of this Act, be deemed a *feme sole*:
 provided always, that where there shall be no guardian or committee
 of the estate of any such person as aforesaid, being infant, idiot, or
 lunatic, or where any person the committee of whose estate if he
 were idiot or lunatic would be authorized to act for and represent
 such person under this Act shall be of unsound mind or incapable of
 managing his affairs, but shall not have been found idiot or lunatic
 under an inquisition, it shall be lawful for the Commissioners to ap-
 point a guardian of such person for the purpose of any proceedings
 under this Act, and from time to time to change such guardian; and
 where the Commissioners see fit they may appoint a person to act as
 the next friend of a married woman for the purpose of any proceeding
 under this Act, and from time to time remove or change such next
 friend.

39. And be it enacted, that proceedings under this Act shall not
 abate or be suspended by any death or transmission or change of Proceedings
not to abate
by death, &c.
 interest, but in any such case of death, or transmission, or change of
 interest, it shall be lawful for the Commissioners, where they see fit,
 to require notices to be given to persons becoming interested, or to
 make any order for discontinuing, suspending, or carrying on the
 proceedings, or otherwise in relation thereto, which to them may
 appear just.

40. And be it enacted, that in every proceeding under this Act, Costs.
 the Commissioners shall have full power and discretion as to the giving
 or withholding costs and expenses, and as to the persons by whom,
 and the funds out of which, the same shall in the first instance or
 ultimately be paid, repaid, and borne, and shall and may apportion
 the same amongst such parties, and in respect of interest, rents, or
 income, and principal or corpus, as they shall see fit.

41. And be it enacted, that application may be made to the Com- Order for a
sale under
this Act may
be made,
 missioners for a sale under this Act, and an order for such sale may
 be made by them notwithstanding any pending proceedings in a Court

Sec. 41.

notwith-
standing
pending suit
or decree for
sale.

of Equity in *England* or *Ireland*, or any decree of any such Court of Equity already made for sale, and notwithstanding the owner may have power under an Act of Parliament or otherwise to make a sale; and where it shall be shown to the Commissioners that a decree for sale has been made by a Court of Equity, the Commissioners shall, if they see fit, without further inquiry, order a sale of the land or lease decreed to be sold; and where any sale shall be made of any land or lease, or part thereof, in respect of which there shall have been a decree of a Court of Equity, or any proceedings pending in a Court of Equity, the Commissioners shall, in distributing such monies and in their other proceedings, have regard to the proceedings in such Court in relation to the priorities and rights of incumbrancers and others; and where there shall have been a decree of a Court of Equity, the Commissioners shall, in distributing the monies arising on the sale, and in their other proceedings, proceed upon and be guided by the declarations of and inquiries and proofs made and taken under such decree in relation to such priorities and rights as aforesaid; provided that it shall be lawful for the Commissioners, where it shall appear to them that there is any clerical error, or any error of names or in computation, or other like error, in such decree, or in any finding or proof, or where from matters coming to their knowledge it shall appear to them that the Court in which the decree has been made should have an opportunity of reconsidering such decree, or considering or reconsidering any finding or proof, to direct such person as the Commissioners may think fit to apply to such Court in relation thereto, and such Court may make such order concerning the matter of such application as it may think fit; and the Commissioners shall, out of any monies arising from any sale under this Act, where there shall have been any such decree or pending proceedings as aforesaid, make such provision for payment of any costs incurred in relation to the proceedings in the Court of Equity as the circumstances may require; or the Commissioners may, in any of the cases aforesaid, where they think fit, order all or any part of the purchase money, after payment thereof of such costs and expenses as may be payable thereout under the orders of the Commissioners, to be paid into the

Court of Equity in or under any suit or decree there pending or made. Secs. 42, 43.

42. And be it enacted, that where the Commissioners shall order the sale of any land or lease, or part thereof, in respect of which any decree shall have been already made by a Court of Equity for sale, or any proceedings shall be pending in a Court of Equity, they shall, by certificate under their seal, notify to such Court the order so made by them; and all proceedings for or in relation to a sale under the decree of such Court shall be stayed, and upon the completion of the sale under such order of the Commissioners any receiver appointed by such Court shall cease to act as such receiver with respect to the land or lease, or part thereof, sold; and it shall be lawful for the Court to suspend or stay any other proceedings in such Court, or under any order or decree already made by such Court, as the Court shall think fit; and pending any proceedings for a sale under this Act it shall not be lawful for any owner or person claiming to be owner within the meaning of this Act, or claiming by the act of such owner or person or by act of law, or any incumbrancer, to commence any proceedings at Law or in Equity for redemption, foreclosure, or sale, or to commence, take, continue, or prosecute any proceeding whatsoever under the Act of the last session of Parliament, "To facilitate the Sale of Incumbered Estates in *Ireland*," without the leave of the Commissioners.

43. And be it enacted, that where an application shall be made for a sale under this Act of an undivided share of any land or lease, or where any such undivided share shall have been sold under this Act, and either before or after the conveyance or assignment thereof under this Act, the Commissioners, on the application of any party interested in such undivided share, or of the purchaser (as the case may be), and after causing to be given such notices to the owner or owners of the other undivided share or shares of the same land or lease as they may think fit, and hearing such parties interested in the respective shares as may apply to them, and making or causing to be made such inquiries as may enable them to make a just partition, may, if they think fit, make an order under their seal for the partition of such land or

After order by Commissioners for sale, proceedings for a sale under decree to be stayed, and no suit, &c., to be commenced without leave of Commissioners, pending proceedings under this Act.

On application for sale of an undivided share, or after sale, Commissioners may, on application of party interested, and giving notices and hearing parties, make order for partition.

Sec. 48.

lease; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each of the undivided shares in such land or lease; and the Commissioners shall have the like authorities, jurisdiction, and powers in relation to such partition as a Court of Equity would have in the case of a partition under the direction of such Court; and the part so allotted in severalty in respect of each such undivided share by such order for partition as aforesaid shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have stood limited or been subject to in case such order had not been made; and the like order for a sale of the part allotted in respect of the undivided share to which the application for the sale shall relate may be made (where the order for partition is made before sale), and the like proceedings had in relation to such sale, and the like conveyance or assignment may be made of the part allotted in respect of the share sold (where the order for partition is made after sale, and before conveyance or assignment), and with the like consequences in the several cases aforesaid, as if the application for a sale, or the sale (as the case may be), had been in respect of the part so allotted as aforesaid; and where any land or lease, or part thereof, to be sold under this Act, is subject to any lease, under-lease, or tenancy under which the lessees, under-lessees, or tenants hold jointly or as tenants in common, it shall be lawful for the Commissioners, on the application of any such lessee, under-lessee, or tenant, and after causing to be given such notices as they may think fit, and hearing such parties as may apply to them, and making such inquiries as they may think necessary, to make an order under their seal for the partition, as between such lessees, under-lessees, or tenants, of the land included in their lease, under-lease, or tenancy, and for the apportionment of the rent reserved or payable under such lease, under-lease, or tenancy; and after such order of partition the owner of the reversion in the respective parts of the land shall have the like remedies for the apportioned rents against the respective parts out of which the same

shall be payable, and the lessees, under-lessees, or tenants holding such respective parts under such lease, under-lease, or tenancy, and such order of partition, as were subsisting for the entire rent before such partition and apportionment; and all the covenants, conditions, and agreements of every such lease, under-lease, or tenancy, except as to the amount of rent to be paid, shall, as regards the respective parts allotted on such partition, and the apportioned parts of the rent, remain in force as against the respective lessees, under-lessees, or tenants to whom under such partition such respective parts shall be allotted.

44. And be it enacted, that where an application shall be made for a sale under this Act of any land or lease, or part thereof, or where the same shall have been sold under this Act, and either before or after the conveyance or assignment thereof under this Act, if application be made to the Commissioners by any party interested in such land or lease, or by the purchaser (as the case may be), for the exchange of all or any part of such land, or of all or any part of the land comprised in such lease, for other land which the owner thereof may be willing to give in exchange, the Commissioners may make or cause to be made such inquiries as they may think fit for ascertaining whether such exchange would be beneficial to the persons interested in the respective lands, and cause such notices to be given to parties interested in the respective lands as they may think fit; and if after making such inquiries, and hearing such parties interested in the respective lands as may apply to them, the Commissioners shall be of opinion that such exchange would be beneficial, and that the terms thereof as proposed, or as modified by them, with the consent of such owner as aforesaid, are just and reasonable, they may make an order under their seal for such exchange accordingly, and in such order for exchange or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given on such

On application for sale or after sale, Commissioners, on application of party interested, and with consent, may make order for exchange.

Secs. 45, 46. exchange would have stood limited or been subject to in case such order had not been made; and the like order for a sale may be made in respect of the land taken in exchange for any land, or any land comprised in any lease to which the application for a sale shall relate (where the order for exchange is made before sale), and the like proceedings had in relation to such sale, and the like conveyance or assignment may be made in respect of the land taken in exchange for the land or lease, or part thereof, sold (where the order for exchange is made after sale, and before conveyance or assignment), and with the like consequences, in the several cases aforesaid, as if the application for a sale, or the sale (as the case may be), had been in respect of the land so taken in exchange.

Partition may be made of land where shares are not subject to be sold under this Act.

45. And be it enacted, that it shall be lawful for the Commissioners, upon the application of the owners of the several undivided shares (not subject to be sold under this Act, or as to which no proceedings for a sale under this Act shall be pending), of any land in Ireland who shall desire to effect a partition of such land, to make or cause to be made such inquiries as the Commissioners may think fit for ascertaining whether such partition would be beneficial to the persons interested in such respective shares; and in case the Commissioners shall be of opinion that the proposed partition would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such partition accordingly; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty, in respect of each such undivided share; and the part so allotted, in severalty, in respect of each such undivided share, by such order of partition shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have stood limited or been subject to in case such order had not been made.

Exchanges may be made of lands not subject to be sold under this Act.

46. And be it enacted, that it shall be lawful for the Commissioners, upon the application of the owners of lands in *Ireland* not subject to be sold under this Act, or as to which no proceedings for a

sale under this Act shall be pending, who shall desire to effect an exchange of such lands, to make or cause to be made such inquiries as the Commissioners may think fit, for ascertaining whether such exchange would be beneficial to the persons interested in the respective lands; and in case the Commissioners shall be of opinion that the proposed exchange would be beneficial, and that the terms thereof are just and reasonable, they shall make an order, under their seal, for such exchange, accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange, respectively, under such order; and the land taken upon such exchange, under such order, shall, without any conveyance or other assurance in relation thereto, go and enure to, and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given upon such exchange would have stood limited or been subject to in case such order had not been made.

Sec. 47.

47. And be it enacted, that it shall be lawful for the Commissioners, upon the application of any number of persons who shall be separately owners of parcels of land not subject to be sold under this Act; or as to which no proceedings for a sale under this Act shall be pending, so intermixed, or divided into parcels of inconvenient form or quantity, that the same cannot be cultivated or occupied to the best advantage, but forming together a tract which may be divided into convenient parcels, and who shall desire to have the whole of such tract divided into convenient parcels, to be allotted in lieu of the old parcels, to make or cause to be made such inquiries as the Commissioners may think fit, for ascertaining whether such proposed division and allotment would be beneficial to the persons interested in such lands; and in case the Commissioners shall be of opinion that the proposed division and allotment would be beneficial, they shall make an order for the division and allotment thereof accordingly, with a map or plan thereunto annexed, in which shall be specified as well the parcels in which the several persons on whose application such order shall have been made were respectively interested before such division and allotment as the several parcels allotted to them

Division of intermixed lands not subject to be sold under this Act.

Secs. 48, 49. respectively by such order; and the parcels of land taken under such division and allotment shall go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the several lands which the persons taking the same shall have relinquished or lost on such division would have stood limited or been subject to in case such order had not been made.

Notices of partitions, exchanges, and divisions to be given.

48. Provided always, and be it enacted, that in the case of land in respect of which no proceedings for a sale under this Act shall be pending, no such order of partition or of exchange, or of division and allotment, as aforesaid, shall be made by the Commissioners until such notices by advertisement in such public newspaper or newspapers as the Commissioners shall direct shall have been given of such proposed partition, exchange, or division and allotment, and three calendar months shall have elapsed from the publication of the last of such advertisements; and in case before the expiration of such three calendar months any person entitled to any estate in or to any charge upon any land included in such proposed partition, exchange, or division and allotment, shall give notice in writing to the Commissioners of his dissent from such proposed partition, exchange, or division and allotment (as the case may be), the Commissioners shall not make an order for such partition, exchange, or division and allotment, unless such dissent shall be withdrawn, or it shall be shown to the Commissioners that the estate or charge of the party so dissenting shall have ceased, or that such estate or charge is not an estate or charge in respect of which he would be entitled in Equity to prevent such partition, exchange, or division and allotment; but no such order as aforesaid shall be in anywise liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same shall have been made.

Conveyance, assignment, and orders for partition, exchange, or division and allotment, conclusive.

49. And be it enacted, that every conveyance and assignment respectively executed as required by this Act, and every order for partition or for exchange, or for division and allotment, made by the Commissioners under their seal, shall for all purposes be conclusive evidence that every application, proceeding, consent, and act whatsoever which ought to have been made, given, and done previously to

the execution of such conveyance or assignment, or the making of such order respectively, has been made, given, and done by the person authorized to make, give, and do the same; and no such conveyance, assignment, or order shall be impeached by reason of any informality therein.

50. And be it enacted, that the Commissioners shall not be subject to be restrained in the execution of their powers under this Act, nor shall any person be restrained from making application under this Act to the Commissioners, or doing any other act or giving any consent under the provisions of this Act, by order or injunction of a Court of Equity, or by writ of prohibition, nor shall the Commissioners be required by writ of mandamus to do any act or take any proceeding under this Act, nor shall proceedings before them be removable by certiorari; and the Commissioners shall not, nor shall any of them, nor shall any person acting under the order or authority of them, or any of them, be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted by them respectively in the exercise or supposed exercise of the powers of this Act.

Proceedings before Commissioners not to be restrained by injunction, &c.

Commissioners not to be liable in respect of acts done *bona fide*.

51. And be it enacted, that it shall be lawful for the Commissioners to review and rescind or vary any order which shall have been previously made by them, but, save as aforesaid and as hereinafter provided, every order of the Commissioners shall be final; provided always, that where the Commissioners allow appeal, but not otherwise, appeal against any order of the Commissioners may be made to the Privy Council of Ireland within one calendar month from the making of the order appealed against, and such appeal shall be heard and reported on by members of the Privy Council to be appointed by such Judicial Committee of the said Privy Council as hereinafter mentioned, and the orders of the said Privy Council in relation to such appeal shall be made according to the reports of such Judicial Committee, and the order of the said Privy Council on the appeal shall be final.

Orders may be reviewed by Commissioners.

Appeal to Privy Council where allowed by Commissioners.

52. And be it enacted, that the Judicial Committee hereinbefore referred to shall consist of the Lord High Chancellor of Ireland for the time being, and such of the members of the said Privy Council as shall from time to time hold any of the following offices in Ireland;

Who to form the Judicial Committee.

Secs. 53, 54. that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of *Ireland*, Lord Chief Justice or Judge of the Court of Queen's Bench, Master of the Rolls, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, and Judge or Commissary of Her Majesty's Court of Prerogative for Causes Ecclesiastical and Court of Faculties in and throughout *Ireland*, and of all persons members of the said Privy Council who shall have held the office of Lord Chancellor of *Ireland*, or any of the other offices hereinbefore mentioned, and of such other persons not exceeding four in number, being Privy Councillors in *Ireland*, as the Lord Lieutenant or other Chief Governor or Governors for the time being of *Ireland* shall appoint to be members of such Committee; and no such appeal as aforesaid shall be heard or reported on by the said Judicial Committee, unless in the presence of at least four members of the said Committee; and no report on such appeal shall be made unless a majority of the members of such Committee present at the hearing concur in such report.

Penalty for false swearing.

53. And be it enacted, that every person who, upon examination upon oath, affirmation, or declaration before the Commissioners or any of them, or any person appointed and authorized under this Act by the Commissioners to administer such oath, affirmation, or declaration, shall wilfully give false evidence, and every person who shall wilfully swear, affirm, or declare falsely in any affidavit authorized under this Act to be received in evidence by the Commissioners, shall be liable to the pains and penalties of perjury.

Construction of terms, &c., in this Act: "Land."

54. And be it enacted, that in the construction of this Act (except where the context or other provisions of the Act require a different construction) the word "land" shall extend to manors, advowsons, rectories, messuages, lands, tenements, rents, and hereditaments of any tenure, whether subject to any fee-farm or other perpetual rent, with or without condition of re-entry for securing the same, or otherwise, and whether corporeal or incorporeal, and any undivided share thereof; and the word "estate" shall extend to an estate in Equity as well as at Law, and to an Equity of redemption, and to the benefit of any covenant or contract for or right to renewal; and

"Estate."

the word "lease" shall include an agreement for a lease, and the estate or interest created or agreed to be created by such lease or agreement in the whole or any part of the land therein comprised; and the expression "lease in perpetuity" shall mean any lease or grant for one or more life or lives, with or without a term of years, or for years determinable on one or more life or lives, or for years absolute, with a covenant or agreement in any of such cases, whether in the same or in any other instrument, for the perpetual renewal of such lease or grant, whether such lease shall be derived out of the inheritance or by way of under-lease out of any lease or other estate; and the expression "Church or College lease" shall include any lease by any archbishop, bishop, dean, or dean and chapter, or other ecclesiastical corporation, sole or aggregate, or by the College of the Holy and Undivided *Trinity* near *Dublin*, or by the Ecclesiastical Commissioners for *Ireland*, where a fine has been paid on the grant of such lease; and the word "incumbrance" shall mean any legal or equitable mortgage in fee, or for any less estate, and also any money secured by a trust, or by judgment, decree, or order of any superior Court of Law or Equity duly registered, and also any legacy, portion, lien, or other charge, whereby a gross sum of money is secured to be paid on an event or at a time certain, and also any annual or periodical charge which by the instrument creating the same, or by any other instrument, is made repurchaseable on payment of a gross sum of money, and also any arrear remaining unpaid of any annual or periodical charge, for payment of which arrear a sale of any land charged therewith might be decreed by a Court of Equity; and the word "incumbrancer" shall mean any person entitled to such incumbrance or entitled to require the payment or discharge thereof; and the word "possession" shall include the receipt of the rents and profits; and the word "owner," as applied to any land, shall include any person entitled in possession in fee simple or in tail, or *quasi* in tail, and any person entitled in possession for a life or lives, or for a term of years determinable on the dropping of any life or lives, or for a term of years of which not less than ninety-nine years are unexpired, not being a lessee at a rent, and also any person entitled in possession as

Sec. 54.

"Lease."

"Lease in perpetuity."

"Church or College lease."

"Incumbrance."

"Incumbrancer."

"Possession."

"Owner."

Sec. 55.

tenant by the curtesy, whether at Law or in Equity, and any person entitled in possession, whether in fee or for any lesser estate as aforesaid, to the Equity of redemption in any land, or to the land subject to any incumbrance, or a trust for the payment of any incumbrance, and any feoffees or trustees for charitable or other purposes, entitled in possession; and the word "owner," as applied to a lease in perpetuity or other lease, shall include any person entitled in possession to the land comprised in such lease for the whole estate created or agreed to be created by such lease, or for any derivative estate (created by settlement, or testamentary or other disposition thereof), *quasi* in tail, or for life or lives, or for years determinable on the dropping of a life or lives, or for years of which not less than fifty years are unexpired, not being an under-lease at a rent derived out of such lease, and any person entitled in possession, for such whole estate or such derivative estate as aforesaid, to the Equity of redemption in such lease or to such lease subject to any incumbrance, or a trust for the payment of any incumbrance; and the word "person" and the word "owner" shall extend to a body politic or corporate as well as to an individual; the word "Commissioners" shall mean "the Commissioners for Sale of Incumbered Estates in *Ireland*;" the expression "the Commissioners of her Majesty's Treasury" shall mean such Commissioners for the time being or any three of them, or the Lord High Treasurer for the time being; and every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing; and every word importing the masculine gender only shall extend to a female.

"Person"
and "Owner."

"Commissioners."

"Commissioners of Her Majesty's Treasury."

Number.

Act to extend to Ireland only, &c.

55. And be it enacted, that this Act shall, except so far as the special provisions of the same otherwise require, extend only to *Ireland*, and may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULE.

Form of Conveyance on Sales by the Commissioners (which may be used with such Variations as the Circumstances may appear to the Commissioners to require).

WE two of the Commissioners for Sale of Incumbered Estates in Ireland, under the authority of an Act passed in the year of the reign of Queen Victoria, intituled [*here set forth the title of this Act*], in consideration of the sum of by E. F. of, &c., paid into the Bank of Ireland to our account to the credit of do grant unto the said E. F. all [*here describe the premises to be sold*] to hold the same unto the said E. F., his heirs and assigns [*or, in the case of a chattel interest in a lease, his executors, administrators, and assigns*], for ever [*or for the unexpired term created by a certain lease [describing the lease, as the case may be], subject to [here specify, where the sale is made subject thereto, the tenancies, leases, under-leases, or charge, either by reference to a Schedule or otherwise]*].

In witness whereof we the said A. B. and C. D. have hereunto set our hands and the seal of the said Commissioners, this day of in the year of our Lord

A. B.

C. D.

[*Seal of the Commission.*]

The Certificate of Payment to be endorsed on or written at the Foot of the Conveyance or Assignment may be in the following Form: —

WE certify that the within [*or above*] mentioned sum of was paid into the Bank of Ireland to the account and credit within [*or above*] mentioned on the day of

A. B.

C. D.

[*Seal of the Commission.*]

THE SECOND ACT CONTINUANCE,

15TH & 16TH VICT., CHAP. 67,

Intituled, "An Act to continue the Powers of applying for a Sale of Lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland."

[30th June, 1852.

12 & 13 Vict.,
c. 77.

WHEREAS by an Act passed in the session of Parliament holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter seventy-seven, intituled "An Act further to facilitate the Sale and Transfer of Incumbered Estates in Ireland;" and by the sixteenth section of the said Act, it is enacted, that where land in *Ireland*, or any such lease as therein particularly mentioned, shall be subject to any incumbrance, it shall be lawful for the owner of such land or lease, within three years from the passing of the said Act, to apply to the Commissioners therein mentioned, for a sale of such land or lease, under the provisions of the said Act; and by the seventeenth section of the said Act, it is enacted, that where any land or lease, as therein mentioned, in *Ireland*, shall be subject to any incumbrance, it shall be lawful for any incumbrancer on such land or lease, within three years from the passing of the said Act, to apply to the Commissioners therein mentioned for a sale, under the provisions of the said Act, of the whole or part (as in the judgment of the Commissioners may appear necessary) of such land or lease, for the purpose of discharging the incumbrances thereon: and whereas it is expedient that the said periods of three years, in the said sections mentioned, should be respectively extended: be it therefore enacted, by the Queen's most excellent Majesty, by, and with the advice and consent

of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that within the period of four years next after the passing of the said recited Act, it shall be lawful for any owner of any such land or lease, as in the said sections of the said Act mentioned, or for any incumbrancer thereon within the meaning of the said Act, and as therein mentioned, to apply to the said Commissioners therein mentioned, for a sale of such land or lease, under the provisions and for the purposes of the said Act ; and thereupon all orders and proceedings by the said Act mentioned or referred to, shall and may be made, had, and taken, as fully and effectually, to all intents and purposes, and under and subject to like provisions, as if such application had been made within the respective periods of three years, by the said sections of the said Act limited for the making of such application by such owner or incumbrancer as aforesaid.

Within the period of four years from the passing of recited Act, applications may be made for a sale under the said Act.

THE THIRD ACT CONTINUANCE,

16TH & 17TH VICT., CHAP. 64,

*Intituled, "An Act for continuing and amending the Act
for facilitating the Sale and Transfer of Incumbered
Estates in Ireland.* [15th August, 1853.

Sec. 1.

12 & 13 Vict.
c. 77.

WHEREAS an Act was passed in the session of Parliament holden in the twelfth and thirteenth years of the reign of her present Majesty, intituled "An Act further to facilitate the Sale and Transfer of Incumbered Estates in Ireland:" and whereas, under the provisions of the said Act, certain Commissioners were duly appointed during her Majesty's pleasure, for the execution of the said Act: and whereas it is expedient to amend the said Act in certain particulars, and to continue the power of the said Commissioners for the further term herein-after mentioned: be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Where an incumbrance affecting any land or lease subject to be sold also affects a lease not so subject, the Commissioners' jurisdiction to extend to such lease.

1. Where application has been made under the said Act, or shall hereafter be made under the said Act, and this Act, or either of them, for a sale of any land, or of any lease, within sections sixteen and seventeen of the said Act, and all or any of the incumbrances affecting such land or lease, also affects any lease of land in Ireland not within the said sections sixteen and seventeen of the said Act, application may be made for sale of such last-mentioned lease; and the jurisdiction and powers of the Commissioners, and all the provisions of the said Act, shall extend and be applicable to such last-

mentioned lease, in like manner as in the case of a lease within the said sections sixteen and seventeen of the said Act. Secs. 2, 3.

2. The twenty-second section of the said recited Act shall be and the same is hereby repealed, and in lieu thereof, be it enacted, that the Commissioners shall not make an order for sale of any land or lease, or any part thereof, upon application by an incumbrancer on such land or lease, in case it be shown to the satisfaction of the Commissioners, by the owner of such land or lease, that no part of such land or lease is subject to any receiver, or in the possession of any incumbrancer, and that the amount of the yearly interest on the incumbrances, and other yearly payments (if any) in respect of charges payable out of the income of such land or lease, and the other lands or leases (if any) subject to the incumbrance of such incumbrancer, do not exceed one-half of the net yearly income (after the payment of all tithe rent-charge, such part of the county cess and poor's-rate, as is payable by the owner, and all crown, quit, and head rent) of such land or lease, or of all the lands or leases so subject: Provided always, that the decision of the said Commissioners thereupon shall in all cases, so far as relates to the power and jurisdiction of the Commissioners over such land or lease, be final and conclusive, to all intents and purposes whatsoever.

The 22nd section of recited Act repealed, and other provisions made in lieu thereof.

3. Where the Commissioners have ordered, or shall order the sale of any lease in perpetuity, they may, if they shall think it expedient so to do, cause notice to be given to the owner or other persons interested in the reversion, or any person on behalf of such owner or other persons, and may thereupon proceed to convert such lease in perpetuity into a fee-farm grant, according to the principles prescribed in the Renewable Leasehold Conversion Act, but their procedure in relation thereto shall be according to the General Rules and practice of the Court of the said Commissioners, and in case such conversion shall be ordered, they shall have power to convey the land included in such lease, to the purchaser in fee, subject to the fee-farm rent ascertained as aforesaid, and to such exceptions, reversions, covenants, and clauses as shall be in conformity with

Where a lease in perpetuity is ordered to be sold the Commissioners may convert it into a fee-farm grant.

Secs. 4, 5.

the original lease, and the provisions of the Renewable Leasehold Conversion Act, and thereupon the owner for the time being shall have the same rights and remedies against the purchaser, his heirs, executors, administrators, and assigns, and against the land, by action, distress, entry, or otherwise, in respect of such rent, and of any exceptions, reservations, covenants, and clauses contained in the said deed, as belong by law to the owner of any fee-farm rent created under the said Acts.

Where a grant amounts to an assignment of a lease the rent reserved to be within sections 16 and 17 of recited Act.

4. Where any instrument, purporting to be a demise or lease, or any other grant or assurance reserving rent, executed or made by any person entitled under any lease of land, is, in construction of law, an assignment of such lease, sections sixteen and seventeen of the said recited Act, and all other the provisions of the said Act and this Act, which would, in case such instrument, grant, or assurance had passed less than the whole term or estate created by such lease, have been applicable to or in respect of the reversion created under such instrument, grant, or assurance, shall extend and apply and shall be deemed to have extended and applied to and in respect of the rent thereby reserved, and all rights and interests thereunder vested in grantor or assignor, in like manner as such provisions would have been applicable to or in respect of such reversion.

Where conveyance is made subject to a lease, it shall not be necessary in pleading to allege prior title to reversion.

5. Where any conveyance or assignment has been made before the passing of this Act, or shall hereafter be made, by the Commissioners, subject to any lease, under-lease, or tenancy, such conveyance or assignment shall be deemed to afford conclusive proof that the estate or interest purporting to be conveyed or assigned thereby is the reversion expectant upon such lease, under-lease, or tenancy, and it shall not be necessary, in any action arising out of or connected with such lease, under-lease, or tenancy, or in any pleadings in such action, to allege or prove the title of such reversion prior to the said conveyance or assignment, and the person to whom such conveyance or assignment is made, his heirs, executors, administrators, and assigns, and every one of them, shall and may have and enjoy like advantages against the lessees, under-lessees, and

tenants, their heirs, executors, administrators, assigns, and under-tenants, and against all other persons, in possession or occupation of the land comprised in such conveyance or assignment, by distress or by entry, for non-payment of rent, or for doing of waste, or other forfeiture, and also shall and may have and enjoy like advantages and remedies by action, for not performing other conditions, covenants, and agreements contained in such lease or under-lease, or in the parol agreement for such tenancy, against the said lessees, under-lessees, and tenants, their heirs, executors, administrators, and assigns, as the person granting such lease or under-lease, or as the landlord entering into an agreement for such tenancy, or his heirs, executors, administrators, or assigns, ought to have had and enjoyed at any time or times, in like manner and form as if the reversion in such land expectant on such lease, under-lease, and tenancy had remained or continued in such person granting such lease or under-lease, or as a landlord entering into such agreement.

Secs. 6, 7.

6. Where there is or shall be an application to the Commissioners for the sale of any undivided share of any land or lease, it shall be lawful for the Commissioners, where they shall see fit so to do, upon the application of the owner of any other undivided share or shares of the same land or lease (and although such other undivided share be not subject to any incumbrance), or on the application of any incumbrancer on such other undivided share or shares, to include the same share or shares, upon such terms as they shall see fit, with the share so proposed to be sold as aforesaid, and in every such case the Commissioners shall apportion the purchase money among the owners according to their respective shares so sold, and shall apportion the expenses as they may see fit.

Power to consolidate sale of different undivided shares.

7. The thirty-seventh section of the said recited Act shall apply and be deemed to have at all times applied to any rent reserved upon a lease, where the Commissioners shall have sold or shall sell the whole reversion expectant upon such lease at different times or in different lots

Clause explanatory of section 37 of recited Act.

Secs. 8-11.

Sale may be had, subject to dower.

Commissioners may include arrears of rent in a sale.

8. The Commissioners shall have power upon any application for sale, whether now pending before them or to be hereafter made, to sell and convey any land, subject to any right, title, or estate to or in dower.

9. Where a sale is made by the Commissioners under the said or this Act of any land or lease, it shall be lawful for them, whenever it shall appear to them convenient so to do, to include in such sale all or any part of the arrears of rent, if any, which may at the time of the sale be owing from any lessees or tenants, subject to whose leases or tenancies the sale is to be made, where such arrears are subject to any incumbrance in respect of which an incumbrancer shall have obtained an order for sale, or where the order for sale has been obtained by the owner, and in the conveyance or assignment of such land or lease to assign such arrears to the purchaser accordingly; and such purchaser, his heirs, executors, administrators, or assigns, shall, after such assignment of the said arrears, have for the recovery and in respect of the non-payment thereof the same rights and remedies which the person or persons who would have been entitled to such arrears would have possessed if no such assignment thereof, nor any conveyance or assignment of such land or lease had been made.

As to reference of General Rules, and construction of Act.

10. All General Rules or Orders heretofore made by the Commissioners shall apply and have reference to the provisions of this Act as well as to those of the said recited Act, and that, in the construction of this Act, the words and phrases to which a particular or extended meaning is assigned by the fifty-fourth section of the said recited Act shall, when used in this Act, be understood to bear such particular or extended meaning, except where the context requires a different construction; and that in the construction of the said recited Act, the word "lease" shall include and shall be deemed to have included any term created by way of use, as well as any term created by way of demise at common law, so as such term be or have become a term in gross.

11. The fifth section of the said Act, whereby it is enacted, that no

Commissioner, Secretary, or other officer should hold his office for a longer period than is therein-mentioned, shall be and the same is hereby repealed; and every such Commissioner, Secretary, or other officer may hold his office for a term not exceeding four years from the passing of this Act, and thenceforth until the end of the then next session of Parliament; and all applications which under the sixteenth and seventeenth sections of the said Act, or under this Act, might be made to the said Commissioners within three years from the passing of the said Act, and which under the Act passed in the last session of Parliament, intituled "An Act to continue the Powers of applying for a Sale of Lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland," may now be made within four years from the passing of the said first-mentioned Act, may be made within two years from the twenty-eighth day of July one thousand eight hundred and fifty-three; and all orders and proceedings by the said Acts or by this Act authorized, and which might be made, had, or taken upon any application made within the said period of four years, may be made, had, and taken within the further period authorized by this Act.

Sec. 12.

Limitation of office of Commissioners, &c., and of applications and orders and proceedings.

15 & 16 Vict. c. 67.

12. In the case of any petition for a sale presented after the passing of this Act, the costs of the petitioner in respect of such petition, and of any proceedings thereunder, shall not (unless the Commissioners shall otherwise direct) be payable out of the proceeds of the sale otherwise than in the same order of priority in which the incumbrance of the petitioner shall be payable, anything in the said recited Acts, or any rule or practice of the Commissioners, to the contrary notwithstanding.

Costs of petitioner for sale shall not be paid out of proceeds, otherwise than in same order as incumbrance shall be payable.

THE GENERAL RULES

UNDER THE ACT;

Dated the 18th Day of October, 1849.

It is this day ordered by the Right Honourable JOHN RICHARDS, one of the Barons of Her Majesty's Court of Exchequer in Ireland, MOUNTFORT LONGFIELD, LL.D., and CHARLES JAMES HARGREAVE, Esq., being the Commissioners for Sale of Incumbered Estates in Ireland, pursuant to the Statute in that case made and provided, that the following General Rules and Orders shall take effect and be binding in relation to all proceedings to be hereafter had or taken under and in pursuance of the provisions of an Act passed in the Session holden in the 12th and 13th years of the reign of Her Majesty Queen Victoria, chap. 77, entitled "An Act further to facilitate the Sale and Transfer of Incumbered Estates in Ireland:"—

1.

Glossary.

That in the construction of any General Rules or Orders made by the Commissioners, the words and phrases to which a particular or extended meaning is assigned by the 54th section of the Act shall, when used in such Rules or Orders, be understood to bear such particular or extended meaning, except where the context or other provisions of the Rules require a different construction; and the word "affidavit" shall include an affirmation or declaration made by any person who by law is empowered to give evidence by affirmation or declaration in lieu of oath; and that when time is to be computed by days, it shall be exclusive of *Sundays*, and the holidays in the next

Time, how
to be compu-
ted.

preceeding rule stated, and when it is to be computed by the month, it shall be construed calendar month; and in all cases it shall be exclusive of the first, and inclusive of the last day, unless the last day be one of such holidays, when the following day shall be included.

2.

That the Commissioners may adjourn their sittings from one day to the next, or to any other day they may think expedient, having regard to the state of their business and the public convenience; but they may resume such sittings again for the despatch of business on any day or days during the interval of any such adjournment, should they find it necessary so to do; and the several offices of the Court shall be opened for business upon all days of the year, except *Sundays, Christmas Day*, and the three days next after *Christmas Day, New Year's Day, Good Friday*, and *Easter Monday and Tuesday*; and shall continue open for the despatch of business from ten until four o'clock each day during the period appointed for the sittings of the Court, and from twelve until three o'clock on all other days; and the officers and clerks belonging thereto, respectively, shall attend in such offices in the discharge of their several duties during the periods above mentioned, unless otherwise engaged in the business of the Court, or unless prevented by sickness, or other unavoidable cause, or allowed leave of absence by the Court.

Commissioners may adjourn their sittings.

Offices of the Court, when to be opened.

3.

That an entry be made in the office, in a book to be kept for that purpose, of every matter depending in the Court, with a proper index, for the purpose of reference; and whenever a petition shall be presented by a party who is not the owner, the name of the owner, as well as the petitioner, shall be inserted in the index to such book, in order that the proceedings pending in the Court may be more easily searched for and ascertained; and that all Orders and Rules made by the Commissioners shall be entered in a book to be called the "Rule Book."

Entry of matter depending in Court, to be made in book with proper index.

4.

Attested copies, how to be made out. That all attested copies of petitions, affidavits, and other documents, in the offices of the Court, shall be written on foolscap paper, book-wise, and shall contain three folios of ninety words in each page; and

To be attested by Secretary and Chief Clerk. all copies shall be attested by the Secretary or a Chief Clerk, whether such copies be brought in for attestation, or be made out in the office, and when it is required that the common seal of the Commissioners shall be affixed to any document, the same shall be done by the Secretary, or by such other person as the Court shall from time to time appoint for that purpose.

5.

Proceedings to be commenced by petition. That proceedings under this Act shall be commenced by petition, to be addressed and framed according to the forms to be approved of by the Commissioners; and every such petition shall be signed by the petitioner or his attorney, and shall be accompanied by an affidavit verifying the material facts therein.

To be signed by petitioner or his attorney and verified.

6.

Petition when not presented through an attorney, to state place where notices and orders may be served. That every person presenting a petition to the Commissioners, otherwise than through the agency of an attorney, shall state some place at foot thereof, within the city of Dublin, where notices and orders may be served on him; and such party, or in case of his death or transmission of his interest, the party claiming in his right may from time to time change such place of address, and substitute some other place within the city of Dublin for the like purpose.

7.

Matter of petition may be registered as a *lis pendens*. That after a petition is filed, the Secretary, or some other officer as the Commissioners shall, from time to time, for that purpose appoint, shall, on the application of any party interested, give a certificate that such petition has been filed, in order that the matter may be registered as a *lis pendens*.

8.

That on every petition for a sale, an order shall be made by the Commissioners either dismissing the petition, or referring it for inquiry to one of the Commissioners, or granting a conditional order for a sale, stating therein, by name or general description, the parties who must be served with such order, and the time within which cause against such order must be shown; but the petitioner, if he be dissatisfied with the fiat of the Commissioners, may, by notice left in the office, require that the matter of his petition may be moved in Court.

Order to be made on petition for sale.

9.

See 10.

That in any case in which a party shall seek to show cause against, or to set aside any order made by the Commissioners, he shall lodge a notice to that effect in the office, and state at foot, or on the back thereof, upon what party he requires such notice to be served, and the subject matter of such notice shall come on to be heard in due course before the Commissioners; and the Commissioners, on the hearing of such matter, shall make an order to vary, or to discharge the order already pronounced, or direct a reference to one of the Commissioners or make such other order as they shall think fit, and may order the whole, or any portion of the costs, up to and including the hearing of such matter, to be paid by such of the parties as they shall think properly liable thereto.

Course where party seeks to show cause against, or to set aside order of Commissioners.

10.

That, if the owner shall rely upon the provisions of the 22nd section of the Act, in opposition to a sale, he shall file an affidavit containing all the particulars required by that section; and also stating, as nearly as he can, how much has been received during each of the seven years immediately preceding the presentation of the petition for the rent and arrears of rent, of all the premises subject to the incumbrance of the petitioner, and how much has become due during that period for tithe rent-charge, poor's rate, and county cess.

When owner relies on provisions of 22nd section, against a sale, he must file an affidavit containing all the particulars required by that sect.

11.

When absolute order for sale pronounced, owner may be required to lodge on oath all deeds, books, &c.

That when an absolute order for a sale shall be produced, the Commissioners may, if they shall think it necessary, require the owner, and all other persons, to produce to, or lodge with, the Commissioners on oath, all deeds, books, papers, documents, and writings in their possession, custody, or power respectively, relating to the premises ordered to be sold, and to the charges thereon, and to do all such other acts, and furnish such information within the authority of the Commissioners to direct, as may be necessary to enable the Commissioners to sell the premises to the best advantage.

12.

Statements in petition not to constitute admission of validity of claim.

That the statements in any petition shall not constitute an admission of the validity of any claim stated therein or of any particular sum being due in respect of any incumbrance, save claims and sums expressly admitted by the petitioner.

13.

Notice to be circulated among the tenantry upon order made absolute.

That on the order for a sale being made absolute, a notice* shall be circulated among the tenantry or persons residing on the property, according to a printed form to be approved by the Commissioners, specifying the tenancies, leases, and agreements which are admitted, and calling upon all parties who have claims for other tenancies, leases, or agreements not specified, or who consider that the terms of their tenancies, leases, or agreements are incorrectly stated, to come forward, and apply for an amendment of the order in this behalf. But this rule shall not be construed as rendering it necessary to serve every tenant, or every person residing on the property, or claiming to be interested therein, with such notice.

14.

Particulars of claim to

That if any person shall claim to be entitled to any lease or agree-

* This notice should be circulated within six weeks after the order for sale has been made absolute. See Further Directions, *infra*.

ment other than those which are admitted, he shall lodge in the office lease and affidavit to be lodged in office.
 the particulars of such claim, accompanied by an affidavit that he believes the same to be just and true, and (if he does not appear by attorney) stating the address to which notices and orders may be served on him; and the Commissioners shall thereupon make an order, whether allowing his claim in the whole or in part, or calling upon him to sustain it by sufficient evidence, or such other order as may meet the merits of the case.

15.

SALE AND CONVEYANCE.

That if, upon a sale by auction, the highest price offered for any lot be, in the opinion of the Commissioners, clearly inadequate, they shall be at liberty to adjourn the sale of that lot to a future day; and no sale of any lot shall be deemed to have been made until the amount of deposit (if any) required by the conditions of sale shall have been actually paid in the manner prescribed by such conditions.

Sale by auction may be adjourned if price inadequate.
 No sale to be deemed made until deposit paid.

16.

That immediately after a sale, whether by public auction or private contract, the purchaser shall obtain a certificate under the seal of the Commissioners, that he is the purchaser, thereby authorizing him to pay the amount of his purchase money into the Bank of Ireland, to the account of the Commissioners, to the credit of the estate of A. B. &c. [*as the case may be*], and shall procure the notification by the Bank to the Commissioners of the receipt of the money; and no sale shall be opened merely by reason of any advance being made upon the biddings or price.

Purchaser may obtain Commissioners' certificate authorizing him to pay money into the Bank.
 Sale not to be opened by mere advance of price.

17.

That in any case in which it shall appear to the Commissioners that any premises can be sold by auction to better advantage out of Dublin, the Commissioners may direct that the biddings shall be made at such place, and before such person, as they shall for that

Sale may be had by auction out of Dublin.

purpose appoint; and thereupon such biddings shall be had accordingly, and shall be returned to the Commissioners, who shall declare the highest bidder the purchaser, unless the highest sum offered shall be, in the opinion of the Commissioners, clearly inadequate, or unless the Commissioners shall see good cause against confirming the sale.

18.

Conveyance or assignment to be prepared at the expense of purchaser.

That the conveyance or assignment of all premises sold by the Commissioners, shall be prepared by and at the expense of the purchaser, and the draft thereof shall be approved of by the Commissioners, or by the Commissioner to whom the matter is referred.

What to specify.

It shall specify the tenancies (if any) subject to which the sale is made; and any apportionment of rent between the purchaser and the proprietor of other lands demised with the lands sold, or any part thereof, and any rents or incumbrances remaining charged upon the property, or any part thereof, in the hands of the purchaser; and the Commissioners shall, when necessary, ascertain and define the relative rights of the purchaser and the prior possessor, with respect to any crops on the land.

19.

Notice on tenants may be by posting.

That the Commissioners, whenever they shall think fit, may dispense with the personal service of notice upon any of the tenants to the lands who may be required to attorn; and may direct that such notice shall be given to such tenants, either by posting the same on some conspicuous place on or near the lands, or by advertising the same in one or more newspapers, or transmitting the same notice through the Post Office, or otherwise, as to the Commissioners shall seem proper.

Or through the Post Office.

20.

Counterparts of leases to be delivered to the purchaser.

That the duplicates or counterparts of leases, where they exist, and can be had, or other evidences of the tenancies subject to which the sale is made, shall be delivered to the purchaser, except where they

relate also to other lands, in which case copies shall be delivered to him.

ser; copies, where they relate to other lands.

21.

That the Commissioners may require and compel all persons claiming to be tenants to produce the leases or agreements, or other instruments under which they so claim, and to give copies thereof.

Commissioners may require tenants to produce leases.

22.

That in case the purchase money and any interest which may have accrued upon it under the terms of the sale or by law shall not be paid into the Bank within fourteen days after the sale, any party to the proceedings may procure an order for payment; or the Commissioners may make such order without any special application, or may, if they think proper, re-sell the property, and the expenses incident to such re-sale, together with the deficiency, if any, in the price obtained below the former price, shall be paid forthwith by the purchaser at the former sale, for which payment, the deposit (if any) shall be a guarantee; but he shall not be entitled to the benefit of any excess in the price which may be obtained at the latter sale.

If purchase money not paid into Bank within 14 days after the sale order for payment may be procured by any party, or Commissioners may re-sell.

23.

DISTRIBUTION OF THE PURCHASE MONEY.

That when the absolute order for a sale shall be pronounced, advertisements shall be published in a Dublin newspaper, and in one or more local newspapers, and such other newspapers as the Commissioners shall direct, giving notice of such order, and calling upon all claimants of estates, interests, or incumbrances in or upon the premises ordered to be sold, to come forward and establish their several claims and demands.

After absolute order for sale, advertisements to be published, calling upon claimants to establish their claims.

24.

That when the absolute order for a sale shall be pronounced, the Commissioners, or in case of a reference to one Commissioner, such

When absolute order

for sale pronounced, Commissioners shall direct further information to be furnished, and a full title to be made out.

Sale not to be delayed.

one Commissioner shall direct what further information shall be procured respecting the title of all parties to the premises, and to the incumbrances affecting the same, and what searches or further searches should be made in relation thereto, and such person as they or he shall direct shall forthwith proceed to make out a full title to the premises, including charges and incumbrances thereon, and shall prove and verify the same in such manner as the Commissioners, or such one Commissioner, shall direct; but the sale itself shall not be delayed by the proceedings under this and the preceding rule, unless the Commissioners shall see cause for deferring such sale.

25.

Order in which costs chargeable against a fund produced by a sale are to be paid.

That the costs chargeable against the fund produced by a sale shall be, first, such costs of, and consequential on the application for the order for sale, as the Commissioners shall think fit to allow; secondly, the expenses of, and incidental to the sale; and thirdly, the costs awarded to any tenant who shall establish a claim for a lease or agreement not set forth in the schedules given by the owner of the land, except such part of the last-mentioned costs as shall be actually recovered under the order of the Commissioners from the owner or person who shall have contested such claim; and the Commissioners may direct the owner or other person contesting such claim to reimburse the fund in any costs awarded to the tenant establishing his claim, and paid to him out of the funds in Court; provided that nothing herein contained shall preclude the Commissioners from giving costs to an owner not being the petitioner or party having the carriage of the proceedings in any case in which it shall appear to be just and reasonable that such owner should be allowed costs.

26.

Costs of proving incumbrance to rank in priority with demand.

That the costs properly incurred by an incumbrancer coming in and proving his incumbrance shall, except where the Commissioners may otherwise direct, rank in point of priority with the incumbrances, in respect of which such costs have been incurred.

27.

That a schedule of incumbrances shall be prepared by the Commissioners, or one of them, or such of their officers as they shall appoint, according to their several priorities, with the sums due on each for principal, interest, and costs respectively, and in case of an annuity for arrears and costs; and when such schedule shall be filed, notice thereof shall be given in a Dublin newspaper and in a local newspaper, and such other newspapers as the Commissioners shall direct, and if the Commissioners shall consider it necessary, notice shall also be specially given to the incumbrancers and other parties interested in the premises, or their attorneys; and if no party interested shall file an objection thereto, within such time as the Commissioners shall appoint for that purpose, the same shall stand confirmed without further order, and all parties shall be bound thereby, so far as relates to the money produced by the sale of the premises, in respect of which such schedule shall be made, unless the Commissioners shall, on special application, make an order to the contrary.

Schedule of incumbrances to be prepared by Commissioners or their officers.

Notice in newspaper of filing,

may be given specially to incumbrancers.

To stand confirmed if no objection within time appointed by the Commissioners.

28.

That any party may file an objection to the schedule of incumbrances, within the time specified under the last preceding rule, and shall briefly state therein the grounds of his objection, and such objection shall be heard and dealt with by the Commissioners in such manner as they shall think fit.

Objection to schedule of incumbrances may be filed by any party.

29.

That after the schedule of incumbrances shall be confirmed, and if the Commissioners shall think the funds may be safely distributed, one of the Commissioners shall allocate the stock and funds in Court (computing the value of the stock at the price of the day of such allocation) among the several incumbrancers and parties entitled, according to their priorities; and such allocation, so far as it may extend, shall be deemed payment of such incumbrances, so that they shall cease to bear interest, and the owner of the incumbrance shall be

After schedule of incumbrances confirmed, stock to be allocated among incumbrancers, according to their priorities.

entitled to the dividends on the stock, and shall be liable to all the consequences of its fall or rise in price ; but such Commissioner shall not be bound to make any allocation of stock or funds in part payment of an incumbrance, unless the incumbrancer consents to such allocation.

30.

First incumbrancer may be paid before schedule of incumbrances finally settled.

That the Commissioners may, before such schedule as aforesaid shall be finally settled, upon the application of any person who shall be the first or an early incumbrancer, and whose claim shall appear to be valid, order payment to such incumbrancer of the amount claimed by him, or any part thereof, if it shall appear to the Commissioners that such order may be made with safety to all parties; but the costs of such application shall not be allowed on taxation against the fund, unless in the order pronounced by the Commissioners they shall award the costs thereof to such incumbrancer.

31.

When stock or money allocated to trustees, no order for transfer to be made unless full number of trustees exist.

That when stock or money is allocated to trustees, the Commissioners may refuse to order a transfer or payment thereof to be made to them, unless the full number of trustees shall exist according to the provisions of the instrument creating the trust.

32.

Fund allocated not to be paid to any party until title verified.

That the fund allocated to any party shall not be transferred or paid over to him, until he shall have verified his title thereto as the Commissioners shall direct.

33.

Certificate of legacy duty paid must be produced before order for transfer to legatee,

That the Commissioners shall not draw in favour of, or transfer stock to, any person in payment of a legacy, until the person entitled to such payment shall produce a certificate from the proper officer, of the payment of the legacy duty, if any payable in respect thereof;

by the Commissioners may, with the consent of such person, draw in favour of, or transfer to, the proper officer authorized to receive the same, the amount of such duty.

34.

That the Commissioners may, in any special case, order the payment of money or transfer of stock to any person, upon his giving such security as shall be approved of by the Commissioners, to abide any order which the Commissioners may afterwards make in regard thereto.

35.

That notice, in writing, of any assignment, charge, or other disposition of any fund in the hands of the Commissioners, or of the interest of any person therein, must be lodged in the office, stating particularly the fund to which the same relates, and the name of the person whose interest therein is affected, and the name of the party so claiming to be interested in such charge, and some place in Great Britain or Ireland, where notice may be served upon such party or his attorney.

36.

PROCEEDINGS FOR AN APPORTIONMENT OF RENT.

That when it is proposed to sell a part only of any lease, any person interested may apply to the Commissioners for an apportionment of the rent reserved by such lease; and notice of such proposed apportionment shall be given to the landlord and to the owner of the remainder of the land included in the lease; and such landlord or owner may lodge in the office a notice of his intention to oppose such apportionment; in which case the matter shall be heard and determined by the Commissioners.

37.

That an application for apportionment may be included in a petition for sale.

R

Application for apportionment may be included in petition.

38.

PROCEEDINGS FOR A PARTITION.

Proceedings
on partition
under the
43rd section
of the Act.

That when an application for a petition is presented under the 43rd section of the Act, the Commissioners shall direct what notices shall be served, and on whom, and shall direct advertisements to be in at least one Dublin newspaper, and one local newspaper, calling upon all parties interested to serve notice of objections (if any they have to a partition), before a certain day therein to be named, and on the day named in such advertisement, or as soon after as may be convenient, the Commissioners shall hear the said application, and if no objection shall be sustained, will issue an order to one or more surveyor or surveyors to make a report according to instructions to be contained in such order, and as soon as the report of the surveyor or surveyors shall be returned to the Commissioners, they shall name a day on which a partition shall be made, unless in the meantime a notice of objection shall be served on behalf of some interested party, in which case the Commissioners shall hear all parties who require to be heard, and examine the proceedings, and make a partition, or such other order thereon as may appear to them to be proper.

39.

Application
for partition
may be in-
cluded in
original pe-
tition or
made by sup-
plemental
petition.

That application for a partition, under the 43rd section of the Act, may be either included in an original petition for a sale, or made by supplemental petition referring to the former petition, and to the proceedings thereon.

40.

Costs of par-
tition to be
borne in pro-
portion to
respective
shares.

That the costs properly incurred in proceedings for a partition, including the costs of the survey and advertisements, shall be borne by the owners of the estate, in proportion to their respective shares; and the amount paid by any owner having a limited interest, shall be a charge in his favour upon the inheritance or whole interest in the share allotted to him.

41.

PROCEEDINGS FOR EXCHANGE, OR FOR DIVISION OF
INTERMIXED LANDS.

That application for an exchange, under the 44th section of the Act, may be either included in an original petition for sale, or made by supplemental petition, referring to the former petition, and to the proceedings thereon.

Application for exchange may be included in original petition or made by supplemental petition.

42.

That the costs properly incurred in proceedings for an exchange or division shall be borne in such proportions as the Commissioners shall direct, having regard to any special agreement between the parties; and the amount paid by any owner having a limited interest shall be a charge in his favour, upon the inheritance or whole interest in the lands allotted to him.

Costs of proceedings for exchange or division of intermixed lands.

43.

PRACTICE.

That every attorney who appears for any party shall enter his name and address in a book, to be kept in the office for that purpose; and every change of attorney or address shall be entered in the same manner.

Attorney to enter name and address in a book.

44.

That every person making an application to the Commissioners shall enter an address in Great Britain or Ireland, to which all notices or orders to him may be sent, and may change the same from time to time; and that any notice or order which may require to be served in any matter shall be lodged with such of the officers of the Court as the Commissioners shall appoint for that purpose, and shall be served in manner hereinafter mentioned, through the office of such officer, unless the Court, or a Commissioner, when sitting alone upon any matter referred to him, shall otherwise order; and such notice or order may be transmitted by the post, by the clerk or officer so to be appointed for that purpose; and the certificate of such clerk or officer, post.

Party making application to enter an address to which notices and orders may be sent.

Notices to be served through office of officer appointed by the Court, or transmitted through the post.

Certificate of of the sending by the post of such notice or order, shall be sufficient clerk sufficient proof of proof that such notice or order was duly served at the time when the service of notice. same would reach the said address in the ordinary course of the post.

45.

Party lodging notice to bring into Notice Office the number of copies required to be served with stamped covers or envelopes.

Officer to compare such notices and copies.

Notices to be lodged before two o'clock. Clerks to deliver copies of notices into Post Office.

and to keep memorandum of having posted notices.

That whenever a notice or order shall be lodged in the Notice Office, for the purpose of being served, the person lodging the same shall at the same time bring in and lodge as many copies of such notice or order as such person shall require to be served, and shall also at the same time bring in and lodge in the office as many covers or envelopes, with a sufficient postage stamp affixed on each, as may be necessary for the purpose of transmitting such copies free by post; and upon which envelopes or covers shall be legibly written by the party bringing in the same, the address of the parties respectively on whom such copies are to be served; and it shall be the duty of the officer to compare such copies with the notice, and to correct the same when necessary, and also to compare the address on each cover or envelope with the address mentioned at the foot of such original notice, and to see that the same is correct. And that all notices to be served through the Notice Office shall be lodged in such office before the hour of two o'clock on the day upon which it is required that the same shall be sent; and that the Notice Clerk himself, or some other of the sworn clerks of the Court, shall deliver into the General Post Office copies of the different notices, properly addressed, as before-mentioned, previous to the usual time for closing the Post Office for receipt of letters to be despatched by the evening mail of that day; and such clerk shall enter in a book, to be kept for that purpose, a memorandum or minute of his having posted such notices, and there shall be endorsed at the foot or on the back of every notice or order that shall be so brought into the Notice Office, the name and address of every person upon whom it is required that such notice or order shall be served, and if an attorney, the name of the party for whom he is concerned.

46.

Order appointing any person to be

That whenever the Commissioners shall appoint any person to act in the nature of a guardian, or next friend, to protect the rights of

any infant, idiot, lunatic, or married woman, in any matter depending before them, the order made by the Commissioners to that effect shall be served upon such person, and all notices and orders subsequently served upon such person shall be deemed to have been duly served upon the party whose interests such person has been so appointed to protect. But it shall be competent for any person interested, or claiming to be interested, to apply to the Commissioners to rescind or vary the order appointing such guardian, or next friend, or to have some other person appointed in his place.

47.

That when any person claiming to be interested shall desire to be served with notice of the proceedings in any matter, he shall be at liberty to enter an appearance in the form or to the effect following:

"C. D. appears in this matter [*stating the title of the matter*], for the purpose of being served with notice of all proceedings therein.

guardian may be served on such person, and may be rescinded.

Special appearance may be entered by any person desirous of being served with notice of proceedings.

"Dated this day of 184 ."

And which notice must be signed by the party himself, or his attorney, and some place stated therein where notices are to be served on him, or on his attorney; and thereupon the party entering such appearance shall be entitled, unless the Court shall think fit otherwise to direct, to be served with notice of all proceedings in the matter, and to appear thereon until he shall, by notice, declare that he withdraws such appearance; but the costs occasioned by entering such appearance shall be paid by the party entering the same, unless the Commissioners shall otherwise direct.

Costs occasioned thereby to be paid by party entering same, unless otherwise ordered

48.

That the Commissioners, or one of them, shall, in the first week of each month, from November to August, inclusive, examine the state of each matter, and the proceedings which may have taken place, since such last examination; and if any matter shall appear not to have been prosecuted with due diligence, they shall require the party having the carriage thereof to explain the reason of such neglect or delay, and if such reason shall not appear satisfactory, they

Commissioners shall examine state of matters at stated periods,

and may transfer carriage of pro-

ceedings in case of delay.

shall be at liberty to order the carriage of such matter to be transferred to some other party interested in such matter, who shall undertake to prosecute the same with due diligence, and shall order the costs occasioned by such transfer to be paid by the party guilty of such delay, and shall order all papers and documents relating to the proceedings in such matter, which were in the custody, power, or procurement of the petitioner, or party having the carriage of the proceedings, or his attorney, to be handed over to such other party, or lodged in Court, as the Commissioners shall direct; and no petition shall be withdrawn or dismissed without the leave of the Commissioners.

49.

Petition may be amended as often as advised, until order made thereon, afterwards only by leave of the Court; amendment as to material facts to be verified by affidavit. Costs of introducing scandalous, prolix, or irrelevant matter to be paid by party introducing it, and to be expunged at his expense.

That every petitioner shall be at liberty, until an order shall be made upon his petition, to amend the same, as often as he may be advised; but after any order shall be made upon the petition no other amendment shall be made in any petition without the leave of the Court; and in all cases of amendment, the material facts, the subject matter of the amendment so sought to be made, shall be verified by affidavit.

50.

That any party introducing any scandalous, prolix, or irrelevant matter into any petition, affidavit, or other document, shall pay the costs incident to such misconduct, and all such scandalous, prolix, and impertinent matter shall be expunged at the expense of such party.

51.

EXAMINATION.

Examination to be *viva voce*.

That all examinations before the Commissioners, or one of them upon reference to a single Commissioner, or before any Examiner, shall be *viva voce*, unless the Commissioner in any special case shall otherwise direct.

52.

Interrogatories for examination of

That whenever any witness shall be examined otherwise than *viva voce*, he shall be examined upon interrogatories which shall be pro-

viously lodged in the office, two days prior to such examination, and copies of which interrogatories may be taken out by all parties; but in case of emergency, the Commissioners, or one of them, may certify that the party examining should not be required to wait for two days after the lodging of his interrogatories, before commencing such examination, and in that case the examination may be proceeded with at such time as the Commissioners, or one of them, shall certify to be proper; and when an examination shall take place out of Dublin, the party examining shall not be precluded from lodging with the Examiner additional interrogatories, and examining the witnesses thereto, in case any matter shall come to the knowledge of such party or his attorney, subsequent to his lodging his interrogatories originally in the office, but in such case the party or his attorney must make an affidavit, to account for his not having lodged such additional interrogatories originally in the office, and such party shall be bound to furnish a full and true copy of such additional interrogatories to the opposite party, at or prior to [the time of] his lodging the same with the Examiner. But this rule shall not extend to cross-interrogatories or to the cross-examination of witnesses, and it shall not be considered necessary to lodge in the office, or to furnish copies to the opposite party, of cross-interrogatories to be exhibited to witnesses.

witnesses to be lodged two days prior to such examination —copies may be taken out by all parties.

Examination may be commenced before the expiration of the two days.

Party wishing to exhibit additional interrogatories must make affidavit accounting for his not having lodged them originally, and must furnish copies.

Rule not to extend to cross-interrogatories.

53.

That all witnesses examined, whether in Great Britain or Ireland, who shall not be examined *viva voce*, shall be examined by such of the officers of the Court as the Commissioners shall appoint for that purpose, and with respect to all examinations that shall take place more than ten statute miles from the General Post Office, Dublin, the officer performing that duty shall receive for each day upon which he shall be actually engaged on that duty, such sum (in addition to his yearly salary) as the Commissioners of Her Majesty's Treasury shall allow, and also his actual travelling charges, not including any allowance for his support, such allowance and charges to be ascertained before the Commissioners, upon the oath of the officer, and to be included amongst the incidental charges and expenses of the Court, in

Examination of witnesses.

Provision for addition to salary of Examiners when examination takes place more than 10 miles from general Post Office.

each quarterly account returned to the Commissioners of Her Majesty's Treasury. And it shall be competent for such person as the Commissioners shall so appoint for the examination of parties or witnesses, to administer all necessary oaths to such parties and witnesses. But in no case shall it be necessary to issue any commission for the examination of parties and witnesses to the person so authorized to act as Examiner.

54.

Duties of
Examiners
when exa-
mination
takes place
out of Dub-
lin.

That when a party or witness shall be examined out of Dublin, it shall be the duty of the Examiner to be at the place appointed for the examination of such party or witness, at the hour of eleven o'clock in the forenoon, at the latest, on each day, and to be then ready to proceed with such examination, and to continue in the discharge of such duty till four o'clock in the afternoon; and in case such examination shall not have been commenced at eleven o'clock, and continued till four o'clock, each day, such Examiner shall state, on the dominical to be returned by him, by whose delay or default it was that such examination was not so commenced or continued.

55.

Depositions
to be taken
in the first
person.

That all Examiners shall take down the depositions of parties and witnesses in the first person, and no party or witness shall be examined in Dublin, except before the Commissioners, or one of them, or at the usual public office of the Examiner, unless the Commissioners, or one of them, shall certify that such examination may be had at some other place, to be mentioned in such certificate.

56.

Commis-
sioners may
issue order
to examine
witnesses
out of Great
Britain and
Ireland.

That the Commissioners, if they shall think fit, on the application of any party, shall make an order for the examination of any witness out of Great Britain and Ireland, before a person to be mentioned in such order, and the expenses of such order and of executing the same shall be in the discretion of the Commissioners; and the examination and cross-examination of such witnesses shall be subject to the rules applicable to the examination of a witness in Great Britain or Ireland, unless the Commissioners shall otherwise direct.

57.

That prior to any examination the Commissioners, or one of them, shall certify the day when publication shall pass, and unless the time so appointed for passing publication shall be enlarged by the Commissioners, or one of them, publication shall pass on that day.

58.

That all parties claiming to be interested, in any matter before the Commissioners, and all witnesses, shall be bound to answer all lawful questions; and in the event of such parties or witnesses not fully or fairly answering the same, whether upon *viva voce* examination, or upon interrogatories, shall be deemed guilty of a contempt of Court.

59.

That the Examiner shall, at the instance of any party, sign a notice specifying the time and place when and where such examination shall be held, which notice shall be duly served on the opposite party, seven days at least before the day named for commencing the examination, if in Ireland, and fourteen days before commencing the examination, out of Ireland.

60.

That all interrogatories shall be conveniently distinguished and numbered, and a copy of all direct interrogatories shall be left with the Examiner two days before they shall be administered to any witness.

61.

That at least four days before the direct examination of any witness by either party, a notice shall be duly served on the opposite party, describing such witness by name, place of residence, and addition, and specifying, by the numbers thereof, the interrogatories which are to be administered to such witness; and the interrogatories to be administered for the cross-examination of any witness shall be confined to matters affecting the credit of such witness, or tending to discredit, to explain, or to qualify the evidence which he may have given on his direct examination; but it shall be competent for a party cross-examining a witness, to administer direct interrogatories also to such

witness, in like manner, and subject to such rules, as if such witness had been originally produced by him.

62.

Personal interrogatories may be exhibited.

That any party interested in any matter shall be at liberty to examine any other party interested therein upon such personal interrogatories as the Commissioners, or one of them, shall approve of, and such examination shall take place within such time as the Commissioners, or one of them, shall appoint; and the examination of any party on personal interrogatories shall be conducted in the same manner as the examination of a witness before an Examiner.

63.

AFFIDAVITS.

Affidavits not to be returned but to be filed.

That whenever any affidavit shall be made before the Commissioners, or any of them, or before any of their officers whom they shall authorize to take the same, such affidavit or affirmation shall not be returned to the party, but shall be filed in the proper office of the Court.

64.

Affidavits not to be received with interlineations, unless noticed in *jurat*.

That no affidavit shall be received in which there shall appear to be either interlineation or erasure, unless such interlineation or erasure be noticed in the *jurat* of such affidavit; and the time when, and the place where, every affidavit is sworn, shall be stated in the *jurat* thereof.

65.

How affidavits taken by commission to be transmitted.

That every affidavit to be made elsewhere than in the city of Dublin shall be folded up in a proper cover, and sealed by the person before whom such affidavit shall be sworn, with his seal, and endorsed and signed by him on the outside, in the manner following:—

In the Matter of the Estate of A. B., } The affidavit of X. Y., sworn
owner, &c. [*as the case may be.*] } before me on this day
of

M. N. [*stating what character the person taking the affidavit fills—such as Master Extraordinary, or Commissioner for taking Affidavits for the Court of Chancery, &c.*]

And such cover shall not be opened, or the seal broken, until the same shall be delivered to the proper officer of the Court; but it shall be competent for the party making such affidavit to transmit the same by post, addressed to the Secretary, first paying the postage thereof.

66.

That all affidavits, answers, and all other proceedings that could be read and relied upon in any of the Superior Courts of Law and Equity, may be read and relied upon before the Commissioners, subject to all just exceptions; and that the copies thereof, purporting to be attested by the proper officer, shall be considered as *prima facie* evidence thereof.

Proceedings that could be relied on in Courts of Law or Equity, may be relied on.

67.

That the Commissioners shall not be bound to reject any affidavit, by reason of any irregularity in the heading of the *jurat* thereof, or by reason of non-compliance with any of the preceding rules.

Affidavits need not be rejected for irregularity.

68.

ORDERS.

That whenever a party served with a conditional order shall file an affidavit, or rely on any other matter as cause against such order, and shall give notice thereof, and the party obtaining such conditional order shall not, within the time specified in such conditional order, or within four days after the expiration thereof, serve notice of motion to make the same absolute, the party opposing such order shall be entitled to have an office rule entered, allowing the cause shown as an authority for taxing the costs of resisting such conditional order; and such costs shall be taxed accordingly; and upon the entering such office rule, and not before, the cause shall be deemed to be allowed.

Showing cause against conditional order.

69.

That in case of disobedience of any order made by the Commissioners, a writ of attachment, in the form to be hereafter settled by them, shall issue against the party so in default or disobeying the

Attachment to issue for disobedience of orders.

order of the Court, and all sheriffs and other officers charged with the execution of like writs, issuing out of the Court of Chancery in Ireland, shall be bound duly to execute the same.

70.

Writs of sequestration may issue.

That the Commissioners shall, in case they think fit, in order to enforce obedience to their orders, cause a writ of sequestration to issue against any party in default, such writ to be in the form to be hereafter approved of by the Commissioners; and such writ of sequestration shall be executed in like manner as writs of sequestration issuing out of the Court of Chancery in Ireland may now be executed.

71.

COSTS.

Costs—regulations for taxation of.

That all costs incurred in proceedings before the Commissioners, or in relation thereto, shall be taxable upon the requisition of any party (without any order referring the same for taxation) by such officer of the Court as the Commissioners shall, from time to time, appoint for that purpose; and it shall be the duty of such officer, if any difficulty shall arise upon the taxation of such costs, to consult the Commissioners, or one of them, in regard thereto. And it shall be lawful for any party dissatisfied with such taxation to apply to the Commissioners, by way of appeal from such taxation. But unless notice of such application shall be lodged for service within two days after such costs shall be certified by the officer appointed to tax the same, the taxation thereof shall be conclusive upon all parties, unless the Commissioners, upon special grounds, shall otherwise order.

72.

Costs may be taxed between attorney and client.

That the officer appointed to tax costs shall be at liberty to tax costs incurred in proceedings before the Commissioners, or in relation thereto, between attorney and client, without any rule or order for that purpose, and it shall be his duty so to do, upon the requisition of the client.

73.

That in all cases of costs, whether between party and party, or attorney and client, it shall be competent for the party against whom such costs are claimed, to offer by notice a sum in gross in lieu of such costs. And if the party entitled to such costs shall agree to accept of such sum, the officer appointed for the taxation of costs shall certify the sum specified in such notice as the sum to which he has ascertained such costs; but in case the party entitled to such costs shall refuse to agree to such notice, and shall thereby render it necessary to have such costs taxed, and the same shall be taxed to less than the sum so offered by such notice, the party entitled to such costs shall be charged with the expenses of such taxation, and the same shall be ascertained by the officer and deducted from the amount of such costs, or an office rule may be obtained for the payment of the same, in case the sum due on such costs shall not be sufficient to cover the amount of such expenses.

Gross sum may be offered by notice in lieu of taxed costs.

If costs taxed to less than sum offered, party entitled to costs to be charged with expenses of taxation.

74.

That in any case in which the Court shall award costs to any party, it shall be optional with the Court, either to refer the costs to be taxed, or by the order to direct payment of a sum in gross in lieu of taxed costs, and also to direct by, and to whom, such sum in gross shall be paid.

Court may award a gross sum in lieu of taxed costs.

75.

That in any case in which costs are directed to be paid by any order, and the same shall be subsequently taxed or ascertained, the party entitled to such costs may, upon production of the said order, and the officer's certificate of the amount thereof, have an office rule entered for the payment of the same.

Rule may be entered for payment of taxed costs upon production of certificate.

76.

That all bills of costs, whether between attorney and client, or party and party, when taxed, shall be retained in the office; and at the end of every term, all such bills of costs taxed since the previous term shall be bound up in one or more volumes, with proper indexes, and to that end the costs for taxation shall be written on post paper,

Bill of costs to be retained in office and bound up with proper indexes.

Inspection,
when not
allowed.

bookwise, with a sufficient margin; and in taxing any subsequent costs in the same cause or matter, regard shall be had to the preceding bills, so as to ascertain that none of the items charged were included in any previous bill; but no inspection shall be given of any bills of costs lodged in the office between attorney and client, except to the attorney or client, or their respective agents, without the special order of the Court.

77.

Costs of attendance of counsel, when allowed.

That on the taxation of costs, no sum shall be allowed for the attendance of counsel, on a reference before a Commissioner, unless such Commissioner shall have entered in his book his approbation of the attendance of such counsel.

78.

MONEY AND STOCK.

Dividends of stock to be received by Bank of Ireland, and account furnished.

That when any stock shall stand in the Bank of *Ireland*, to the credit of the Commissioners, the Governor and Company of the Bank of *Ireland* shall, from to time, receive the dividends arising therefrom, and furnish to the Commissioners a schedule signed by the proper officer of the Bank of *Ireland*, containing all sums of money received by them for such dividends, specifying in what matter and account each sum is received.

79.

Bank of Ireland not to transfer stock or pay money without order.

That the Governor and Company of the Bank of *Ireland* shall not transfer stock, or pay money standing to the credit of any matter, without an order of the Court, under their seal, and signed by two of the Commissioners.

80.

Accounts may be simplified by apportioning fractions of sixpence.

That in order to provide against the accumulation of accounts for sums under six-pence, in all cases where a fractional part of sixpence may occur in dividing sums in cash or stock, or may remain, after payment out of all the other funds, as the sole balance, the Commissioners may pay or transfer the same, not exceeding sixpence, to the parties in such manner as shall appear most convenient

for closing finally such account; and that where an allocation or order shall be made for any fraction under one penny, the Commissioners may draw without regard to such fraction. ?

81.

That in any case in which an order shall direct the dividends of stock to be invested from time to time, the officer of the Court shall give a schedule and notice thereof to the broker, who shall accordingly invest such dividends at the end of each half year, deducting therefrom his lawful commission; and thereupon the Commissioners shall draw in favour of such broker for the sum so invested.

Dividends of stock to be invested after notice to broker.

82.

That the broker, in figuring valuations of stock under any money order, shall not charge more than five shillings for the first valuation, and two shillings for every subsequent valuation: and shall, on the first day of January, and first day of July, in every year, certify to the Commissioners what has been received by him for such valuations during the preceding six months.

Fees of broker in figuring valuation of stock.

83.

That in any case in which any stock shall have been allocated to, and afterwards ordered to be transferred to any person, the Commissioners shall draw in his favour for the dividends (if any) received, subsequent to such allocation.

When stock transferred to any person, Commissioners may draw for dividends.

84.

That whenever an order shall be made for the purchase of stock with money standing to the credit of the Commissioners, the price shall not be paid to the broker until he shall have transferred to the Commissioners, stock equal in value to the money to be invested, deducting his lawful commission, and shall have produced the certificate of the proper officer of the Bank of *Ireland* to that effect, unless the Commissioners shall, under special circumstances, otherwise direct.

Price of stock ordered to be purchased, not to be paid until stock transferred.

Price of stock
ordered to be
transferred
not to be
paid to
broker until
certificate
of transfer
produced.

That wherever an order shall be made for the sale of stock standing in the names of the Commissioners, the same shall not be transferred until the broker shall have lodged in Bank, to the credit of the Commissioners, the price thereof, deducting his lawful commission, and shall have produced the certificate of the proper officer of the Bank of *Ireland* to that effect, unless the Commissioners shall, under special circumstances, otherwise direct.

JOHN RICHARDS.

M. LONGFIELD.

CHAS. J. HARGREAVE.

Submitted to the Privy Council for their approbation, September, 18, 1849.

S. WOULFE FLANAGAN,
Secretary.

Approved of by the Privy Council, October, 17, 1849.

MAZIERE BRADY, C.

CHARLEMONT.

EDWARD MEATH.

WM. M. SOMERVILLE.

F. BLACKBURNE.

L. PERRIN.

R. KEATINGE.

JAMES HENRY MONAHAN.

FRED. SHAW.

T. F. KENNEDY.

RICHD. MOORE.

STATISTICS

AND

GENERAL SUMMARY OF PROCEEDINGS OF THE COMMISSION,

*From its Opening to the 31st July, 1853.**

INDEX TO SUMMARY.

Table	1.	Number of petitions lodged.
„	2.	General statistics.
„	3.	Gross total sales.
„	4.	Amount of sales in each County and mode of sale.
„	5.	Cash account.
„	6.	Classification of purchasers.
„	7.	English and Scotch purchasers.
„	8.	Localities whence these purchasers came.
„	9.	Classification according to amount of purchase money.
„	10.	Classification as to conditions in life.
„	11.	Number of Estates brought from Chancery.
„	12.	Number of titled persons whose Estates have been sold.
„	13.	Staff and Salaries.

* These interesting statistics and general summary of the proceedings of the Court have been slightly condensed from a pamphlet entitled "Ireland's Recovery," from the pen of Mr. John Locke, the Auction Clerk to the Commission; the pamphlet in question contains a vast deal of other matter of a highly interesting and instructive character in connexion with the operation of the Commission.

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General Summary of Proceedings from the Filing of the first Petition, October 21st, 1849, to July 31st, 1853.

Table 1.	From 21st October to 31st December, 1849	.	.	273
Number of	1850	.	.	1,200
petitions	1851	.	.	627
lodged.	1852	.	.	480
	1853, January to July, both inclusive	.	.	298
				<hr/> 2,878

Table 2.	Number of petitions lodged, including those for partitions and		
General	exchanges, as well as for sale of estates (of which		
statistics.	about 450 were duplicates and supplemental		
	petitions)	.	2,878
	Number of these in which the owners were insolvent		284
	Number in which owners were petitioners for sale of their		
	estates	.	654
	Number of conditional orders for sale	.	2,319
	Number of absolute orders for sale	.	2,109
	Number of estates (or parts of estates) sold by the Com-		
	missioners	.	1,081
	Number of lots sold:		
	In Court by public auction	.	3,775
	By provincial auction, confirmed by		
	the Commissioners	.	917
	By proposal accepted by the Commis-		
	sioners	.	1,116
	Total number of lots sold	<hr/>	5,808
	Number of conveyances executed by the Commissioners		3,523
	Number of certificates of conveyances upon which receivers		
	discharged from estates sold	.	655

Statistics and General Summary. 379

Number of Bank orders for payment or transfer of funds	7,800
Number of boxes containing title deeds and leases, deposited in the Record Office of the Commission	1,632

Gross amount of rentals of estates sold:	£	s.	d.	Table 3.
In Court by public auction	535,614	12	6	Gross rental.
By provincial auction, confirmed by the Commissioners	98,659	8	3	
By proposal accepted by the Commissioners (about)	95,000	0	0	
Total	£729,274	0	9	

Number of acres sold:	A.	R.	P.	
By public auction in Court	1,036,137	2	37	Acreage.
By provincial auction, confirmed by the Commissioners	205,564	2	8	
By proposal accepted by the Commissioners (about)	405,000	0	0	
Total	1,691,702	1	5	

PROVINCE OF LEINSTER.

	£	s.	d.	£	s.	d.	Table IV.
County of Carlow	60,791	0	0				
Carlow (town of)	160	0	0				
County of Dublin	143,355	0	5	60,951	0	0	Amount of sale in each county.
Dublin (city of)	239,935	12	3				
Kingstown (town of)	310	0	0				
Rathmines (town of)	7,945	0	0				

380 *Statistics and General Summary.*

PROVINCE OF LEINSTER—*continued.*

	£	s.	d.	£	s.	d.
Rathfarnham (town of)	285	0	0			
Boosterstown (town of)	85	0	0			
Balrothery (village of)	125	0	0			
				391,990	12	8
County of Kildare . . .	109,060	0	0			
Kilcock (town of) . .	315	0	0			
Rathangan (town of)	100	0	0			
				109,475	0	0
County of Kilkenny . . .	346,845	3	0			
Kilkenny (city of)	7,756	0	0			
Freshford (town of)	420	0	0			
				355,021	3	0
King's County	234,545	0	0			
Tullamore (town of)	180	0	0			
Parsonstown (town of)	2,667	0	0			
Riverstown (village of)	11	0	0			
				237,403	0	0
County of Longford				105,725	0	0
County of Louth	108,445	0	0			
Drogheda (town of)	960	0	0			
Dundalk (town of)	3,520	0	0			
				112,925	0	0
County of Meath	475,176	12	7			
Kells (town of) . . .	150	0	0			
Trim (town of) . . .	310	0	0			
				475,636	12	7
County of Westmeath . . .	240,919	0	0			
Athlone (town of) . .	4,505	0	0			
				245,424	0	0
Queen's County	363,976	9	10			
Maryborough (town of)	63	0	0			
Portarlington (town of)	131	18	1			
				364,171	7	11
County of Wexford	219,275	0	0			
Wexford (town of) . .	260	0	0			
New Ross (town of) . .	3,530	0	0			
				223,065	0	0

PROVINCE OF LEINSTER—*continued.*

	£	s.	d.	£	s.	d.
County of Wicklow . . .	84,762	9	0			
Baltinglass (town of) . .	1,090	0	0			
	<hr/>			85,852	9	0
Total . . .				<hr/>		
				2,767,640	5	2

PROVINCE OF ULSTER.

County of Antrim . . .	390,002	2	1			
Belfast (town of) . . .	283,905	7	9			
	<hr/>			673,907	9	10
County of Armagh . . .	129,182	0	0			
Newry (town of) . . .	2,060	0	0			
Lurgan (town of) . . .	235	0	0			
Newtownhamilton (town of)	145	0	0			
	<hr/>			131,622	0	0
County of Cavan . . .				180,966	9	4
County of Donegal . . .				42,450	0	0
County of Down . . .	267,308	13	8			
Rathfriland (town of) . .	1,219	0	0			
Warren Point . . .	350	0	0			
Newry (town of) . . .	445	0	0			
	<hr/>			269,322	13	8
County of Fermanagh . . .	142,665	8	4			
Enniskillen . . .	3,020	0	0			
	<hr/>			145,685	8	4
County of Londonderry . . .				14,745	0	0
County of Monaghan . . .				270,957	5	0
County of Tyrone . . .	443,401	8	6			
Dungannon (town of) . .	145	0	0			
	<hr/>			443,546	8	6
Total . . .				<hr/>		
				£2,173,202	9	8

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PROVINCE OF MUNSTER.

	£	s.	d.	£	s.	d.
County of Clare . . .	195,795	0	0			
Ennis (town of) . .	500	0	0			
				196,295	0	0
County of Cork . . .	1,087,869	4	11			
Cork (city of) . .	49,375	0	0			
Bandon (town of) .	6,395	0	0			
Youghal (town of)	3,815	0	0			
Fermoy (town of)	260	0	0			
				1,147,714	4	11
County of Tipperary, . .	674,554	4	8			
Cashel (city of) . .	835	0	0			
Nenagh (town of)	1,230	0	0			
Roscrea (town of)	160	0	0			
Fethard (town of)	100	0	0			
				676,879	4	8
County of Waterford . .	318,856	4	10			
Waterford (city of)	620	0	0			
Carrickbeg (town of)	1,260	0	0			
				320,736	4	10
County of Kerry . . .				246,581	0	0
County of Limerick . . .	666,628	5	6			
Limerick (city of)	15,454	0	0			
				682,082	5	6
Total . . .				£3,270,287	19	11

PROVINCE OF CONNAUGHT.

County of Galway . . .	1,194,825	13	4			
Galway (town of) . .	58,650	0	0			
Ballinasloe (town of)	740	0	0			
Gort (town of) . . .	6,490	0	0			
Clifton (town of) . .	150	0	0			
				1,260,855	13	4
County of Leitrim . . .	83,630	0	0			
Carrick-on-Shannon (town of)	760	0	0			
				84,390	0	0

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PROVINCE OF CONNAUGHT—*continued.*

	£	s.	d.	£	s.	d.
County of Roscommon . . .	266,512	12	0			
Roscommon (town of)	360	0	0			
Castlerea (town of) .	340	0	0			
				267,212	12	0
County of Sligo . . .	62,560	0	0			
Sligo (town of) .	5,500	0	0			
				68,060	0	0
County of Mayo . . .	537,744	5	0			
Castlebar (town of) .	500	0	0			
				538,244	0	0
Total . . .				£2,218,762	10	4

PROVINCE OF LEINSTER .	2,767,640	5	2	Summary.
" ULSTER .	2,173,202	9	8	
" MUNSTER .	3,270,287	19	11	
" CONNAUGHT .	2,218,762	10	4	
TOTAL .	£10,429,893	5	1	

	£	s.	d.	
By public auction in Court . . .	6,832,304	12	8	Mode of sale.
By provincial auction, confirmed by the Commissioners	1,828,384	0	0	
By proposal, accepted by the Commissioners	1,769,204	12	5	
TOTAL .	£10,429,893	5	1	

	£	s.	d.	
Amount distributed, in cash and stock .	6,436,072	11	11	Table 5.
Amount of credits to purchasers on foot of incumbrances	1,142,411	3	6	Cash account.

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	£	s.	d.	£	s.	d.
<i>Funds on hand.</i>						
Cash in Bank, 31st August,						
1853	814,172	1	5			
3½ per cent. stock, 31st August,						
1853	945,830	15	11			
3 per cent. consols, 31st August,						
1853	288,458	3	8			
				2,048,461	1	0
Provisional credits to purchasers, incumbrancers; funds set apart to pay annuitants; and to meet charges not at present payable; and monies allocated to trustees, when from death or absence it became necessary that new trustees should be appointed; and purchase-money of recent sales not yet lodged				802,948	8	8
Total amount of sales				10,429,893	5	1

Table 6.
Classification of sales.

£ 1,000 and under.	£ 1,000 to 2,000	£ 2,000 to 5,000	£ 5,000 to 10,000	£ 10,000 to 20,000	£ 20,000 and upwards.	Total Number of Purchasers.
1,789	929	868	463	134	30	4,213

PROVINCE OF LEINSTER.

No. of Properties purchased by English and Scotch Purchasers.	No. of Purchasers.	County.	Acreage.			Purchase Money.		
			A.	R.	P.	£	s.	d.
7	7	In county of Dublin, chiefly house property in the city, . . .				12,755	0	0
2	2	Kildare . . .	225	0	4	1,820	0	0
7	9	Kilkenny . . .	6,630	3	20	79,425	0	0
2	2	King's County . . .	9,060	0	23	64,425	0	0
2	2	Longford . . .	2,866	1	19	7,360	0	0
2	2	Louth . . .	4,504	3	31	23,350	0	0
2	2	Meath . . .	1,004	0	8	18,150	0	0
3	3	Queen's County . . .	1,031	3	8	7,875	0	0
2	3	Westmeath . . .	1,965	0	10	27,000	0	0
1	1	Wexford . . .	9,887	1	24	55,200	0	0
2	2	Wicklow . . .	6,308	0	23	37,825	0	0
		Total . . .	43,484	3	10	330,165	0	0

Table 7.
Classification of purchasers and counties.

PROVINCE OF ULSTER.

1	1	Antrim . . .	750	0	0	23,750	0	0
3	2	Cavan . . .	4,841	0	1	24,635	0	0
1	1	Donegal . . .	365	1	34	2,400	0	0
1	1	Down . . .	4,067	0	0	12,000	0	0
2	2	Fermanagh . . .	409	1	23	4,950	0	0
2	2	Monaghan . . .	12,518	0	6	184,297	0	0
14	6	Tyrone . . .	29,415	1	12	72,485	0	0
		Total . . .	51,866	0	36	324,517	0	0

PROVINCE OF MUNSTER.

No. of Properties purchased by English and Scotch Purchasers.	No. of Purchasers.	County.	Acreage.			Purchase Money.		
			A.	R.	P.	£	s.	d.
29	29	Cork	18,877	1	13	108,906	12	6
3	3	Kerry	5,884	2	12	10,250	0	0
8	10	Limerick	19,665	0	88	91,190	0	0
23	23	Tipperary	22,625	2	11	207,455	0	0
8	10	Waterford	7,809	3	8	86,360	0	0
		Total	68,862	2	2	504,161	12	6

PROVINCE OF CONNAUGHT.

20	23	Galway	240,268	0	4	450,930	0	0
6	6	Leitrim	4,040	2	38	19,400	0	0
7	7	Roscommon	3,788	3	16	25,320	0	0
13	20	Mayo	84,630	2	3	125,115	0	0
		Total	332,723	0	21	620,765	0	0

SUMMARY.

Summary of
Table 7.

32	35	Leinster	43,484	3	10	330,165	0	0
24	15	Ulster	51,866	0	36	324,517	0	0
71	75	Munster	68,862	2	2	504,161	12	6
46	36	Connaught	332,723	0	21	620,765	0	0
173	131	Total	496,935	2	29	1779,608	12	6

Table 8.
Purchasers' address.

Counties, &c.	No. of Purchasers.	Amount of Purchase Money.		
		£	s.	d.
From Buckinghamshire	1	1,220	0	0
" Cheshire	4	53,205	0	0
" Derbyshire	3	6,705	0	0
" Devonshire	9	24,470	0	0
" Durham	1	7,750	0	0
" Gloucestershire,	3	16,920	0	0
" Hampshire	4	31,160	0	0
" Hertfordshire	1	11,000	0	0
" Kent	1	1,700	0	0
" London District	73	977,438	10	2
" Lincolnshire	3	5,490	0	0
" Lancashire, including Liverpool and Birkenhead	27	236,366	13	4
" Norfolk	1	16,500	0	0
" Oxfordshire	1	6,280	0	0
" Pembrokeshire	3	15,145	0	0
" Suffolk	2	69,350	0	0
" Sussex	1	7,610	0	0
" Shropshire	2	8,840	0	0
" Staffordshire	3	5,450	0	0
" Somersetshire	1	2,550	0	0
" Warwickshire	4	14,900	0	0
" Yorkshire	5	10,942	0	0
" Scotland	21	204,645	0	0
" Calcutta*	3	40,250	0	0
" Isle of Man	3	1,406	9	0
" America†	1	2,320	0	0
	181	1,779,608	12	6

* Officers, two in the Military and one in the Civil Service.
† A returned emigrant.

Table 9.

Classification of English and Scotch.

£ 1,000 and Under	£ 1,000 to 2,000	£ 2,000 to 5,000	£ 5,000 to 10,000	£ 10,000 to 20,000	£ 20,000 and Upwards.	Total Number of English and Scotch Purchasers.
31	88	45	80	17	20	181

Table 10.

Same as to
condition in
life.

Gentry, including eight Titled Persons.	Manufacturers and Merchants, inclu- ding eight Firms.	Insurance and Land Companies.	Far- mers.	Total Number of English and Scotch Purchasers.
79	62	7	33	181

Table 11.

Chancery es-
tates sold.
How long in
Chancery.

Over 3 and under 5 years	.	.	.	219
5 " 10	"	.	.	864
10 " 15	"	.	.	167
15 " 20	"	.	.	89
20 " 25	"	.	.	46
25 " 30	"	.	.	31
30 " 35	"	.	.	22
35 " 40	"	.	.	17
40 " 45	"	.	.	6
45 " 50	"	.	.	4
50 years	.	.	.	9
Total	.	.	.	974

- 3 Marquises (one only for the exchange of land).
- 17 Earls.
- 4 Viscounts.
- 1 Lord (by courtesy).
- 6 Barons.
- 12 Honourables and Right Honourables.
- 21 Baronets.
- 6 Titled Ladies.
- 5 Knights.
- 2 Counts.
- 7 Members of Parliament.
- 18 Ex-Members of Parliament.

Table 12.

Titled persons sold, or to be sold out.

Total 102

In 33 cases, or one-third of this number, the owners are also petitioners for the sale.

NAME.	OFFICE.	Salary per annum.
The Right Honourable JOHN RICHARDS, one of the Barons of her Majesty's Court of Exchequer in Ireland,	Chief Commissioner, .	£ 1500*
Richard Rothwell, . . .	His Examiner, . . .	400
Thomas Nichols Moore, . .	Examiner's Clerk, . .	100
MOUNTFORT LONGFIELD, Q.C., LL.D.,	Second Commissioner,	2000
James McDonnell, Barrister-at-Law,	His Examiner,	400
Richard Henry V. Archer, .	Examiner's Clerk, . .	100
CHARLES JAMES HARGREAVE, Q.C., LL.D.,	Third Commissioner, .	2000
Richard D. Urling, Barrister-at-law,	His Examiner,	400
Henry Fawcett,	Examiner's Clerk, . .	100
	Carried forward, . .	7000

Table 13.

Staff of Commissioners.

* Besides salary as one of the Barons.

NAME.	OFFICE.	Salary per annum.
		£
	Brought forward, .	7000
Stephen Woulfe Flanagan, Barrister-at-Law, . . .	Master,	1000
Henry Carey, Barrister-at-Law,	Secretary, Registrar, and Examiner, .	700
Michael O'Loughlin, . . .	Secretary's Assistant, .	300
George Pickering Richards, .	First Assistant in Registrar's Office, .	200
Andrew Edward Carleton, .	Second Assistant, .	100
Richard A. Fitzgerald, Solicitor,	General Clerk and Taxing Officer, . .	700*
Thomas John Charles Richards,	First Assistant to ditto,	250
Abraham J. Stewart, . . .	Second Assistant to do.	150
Thomas Seed,	Accountant, . . .	500
William John Gillespie, . .	First Assistant to ditto,	200
Peter Burrowes,	Second Assistant to do,	100
Robert King Piers, Solicitor,	Notice Clerk, . . .	400
Richard F. Frizell, . . .	Assistant to ditto, .	250
Thomas Welsh, Barrister-at-Law,	Keeper of Deeds, &c. .	300
William Gumley,	His Assistant, . . .	100
John Locke, A.B.,	Auction Clerk, . . .	180
James Woulfe,	Crier,	70
Michael Merna,	Porter and Messenger,	50
James Antony,	" "	50
Philip McMahon,	" "	50
Frances Gumley,	Housekeeper, . . .	50
Lucy Greaves,	Her Assistant, . . .	30
	Total . . .	£ 12,730

* From July, 1853.

THE SCHEDULE OF FEES,

*To be allowed by the Taxing Officer on the Taxation of
Costs in Proceedings before the Commissioners.*

This schedule of fees, as regards the draft rentals, to take effect in relation to all business henceforward done; in all other respects this schedule to have a retrospective effect in regard to costs not hitherto certified.—
28th November, 1850.

APPEARANCE,	£	s.	d.
Entering an appearance, and all attendances in relation thereto, . . . . .	. 0	6	8

ATTENDANCES,			
On client, not exceeding one hour, . . . . .	. 0	6	8
For each subsequent hour, . . . . .	. 0	6	8
For each day cause or motion in day list, and not at hearing, . . . . .	. 0	6	8
Each day it is at hearing, . . . . .	. 0	13	4

[Not to be allowed unless a competent person attends acquainted with the facts and proceedings in the cause, and having the proper documents in readiness.]

All attendances to lodge money in Bank, including the procuring of the order and returning the receipt to Court, . . . . .	. 1	0	0
Drawing money, obtaining order, and returning receipt, . . . . .	. 1	0	0
On witness in town, . . . . .	. 0	6	8
With witness to examination, . . . . .	. 0	6	8
On counsel with brief or case, . . . . .	. 0	6	8

ATTENDANCES—continued.**£ s. d.**

On taxation, including perusal and instructions by the Solicitor who lodges such bill of costs for 160 items or under,	0	6	8
For each succeeding item,	0	0	$\frac{1}{2}$

[The solicitor opposing the taxation is to be allowed the usual fee for attendances in proportion to time and labour usefully bestowed on the taxation, such attendances to be allowed but to one opposing party, whether owner or incumbrancer, to be determined by the Commissioners according to the circumstances of the case.]

For each Office Rule,	0	3	4
For the solicitor who obtains any order of Court, taking out same, attendance included,	0	6	8
Filing a notice or order, or marking the names of the parties on whom it is to be served, and attending with it at the Notice Office,	0	3	4
On each newspaper in which advertisement is inserted, exclusive of charges by proprietors of newspapers,	0	3	4
Correspondence and attendance upon parties requiring copies of rentals previous to a sale,	1	1	0
And such further sum in proportion to the extent of the estate about to be sold, as may appear reasonable.			

To lodge claim or lease, *see* CLAIM OR LEASE.

BRIEF—see COPY.**COPIES,**

Of any document, if under six folios of ninety words each,	0	1	6
For each succeeding folio of ninety words,	0	0	3
Of abstract for the Commissioners for every six folios, or fractional part thereof,	0	2	0
Of brief for counsel, per folio of ninety words,	0	0	4

[In all cases of briefs, a fractional part of a folio exceeding a line of brief, or sixteen words, to be deemed a folio. In all other cases a fractional part of a folio exceeding nine words to be deemed a folio.]

The Schedule of Fees.

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COPIES—continued.

	£	s.	d.
Lease, or agreement signed by tenant, per folio,	. 0	0	3
Of notice, including postage stamp and envelope, directed,	. 0	1	0
Of affidavit, for every six folios or under, or fraction, amounting to half a folio,	. 0	2	0
Of rental, per folio,	. 0	0	4

[In no case more than three copies of rental to be allowed, viz., one for Commissioners' approval, one for the solicitor's own use, and one copy for printer.]

Of advertisement for sale, if six folios or under,	. 0	2	0
For every succeeding folio or fraction,	. 0	0	4
Of all other advertisements,	. 0	1	0
Of costs, each item,	. 0	0	1

CLAIM OF LEASE,

For any claim of lease or agreement on behalf of a tenant, including attendance,	. 1	0	0
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DRAFTS,

Petition for sale, exchange, &c., and copy thereof,	. 2	2	0
---	-----	---	---

[No additional charge to be allowed for any amendment that may be made in abstract or petition.]

SCHEDULES TO PETITION,

INCUMBRANCES,

For each incumbrance,	. 0	2	0
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TENANCIES,

In case the petitioner shall discontinue proceedings towards a sale with sanction of the Commissioners, and where the fees hereinafter mentioned for the notice under the 13th General Order shall not become payable, or in case the carriage of proceedings shall be transferred from the petitioner to another party, except from neglect, he shall be allowed :

DRAFTS—continued.**£ s. d.**

For each head denomination of land or lease, where more than one lease on each denomination, and where it shall turn out that the tenancy is correctly stated, 0 2 0

Abstract, where the same shall appear to the Commissioners to have been concisely and properly prepared, and so far as the Commissioners shall certify their approbation thereof, for every six folios, or fractional part thereof, 0 4 0

Of notice—*see* NOTICE.

Affidavit, for every six folios or under, or fraction, amounting to half a folio, 0 4 0

Advertisement for sale, if six folios or under, 0 6 8

For every succeeding folio, or fraction, 0 0 8

Of all other advertisements, 0 6 8

Rental, including all readings, correspondence, and attendances necessary to acquire the full information required by the Commissioners to be stated in such rental, except necessary attendances on the Commissioners, settling same, and on the printer, per folio, . 0 2 6

In case the notice under the thirteenth General Order shall be found inaccurate, or that the draft advertisement or rental shall not be in conformity with the rules of the Court, or shall be drawn out to an unnecessary length, so as to make it necessary for the Commissioners to make considerable alterations or reductions therein, the costs shall be allowed for said draft, per folio, 0 0 6

Schedule of incumbrances after absolute order for sale, for each incumbrance, 0 5 0

Deed of conveyance, per skin, 0 15 0

Any document to be filed in Court, not otherwise provided, per skin, 0 15 0

[Each skin to contain fifteen folios of ninety words each. The last fraction to be deemed a skin.]

DRAFTS—continued.

£ s. d.

Requisition for search—*see* SEARCHES.

ENGROSSING,

Deed, per skin, 0 15 0

[Each skin to contain fifteen folios of ninety words each. The last fraction to deemed a skin.]

Affidavit—*see* COPY.

FEES,

Term fee,

For the party having the carriage of the suit, or for
the owner only once, 1 1 0
Term fee for other parties, only once, 0 6 8

[The Term fee allowed to Solicitors is not to be considered as disentitling them to their fees for all proper and necessary attendances.]

On signing any document requiring signature, 0 3 4

On obtaining office rule—*see* ATTENDANCE.

On transmitting notice—*see* ATTENDANCE.

For the Solicitor having the carriage of the sale, fee,
on perusal and approving of the draft of each deed
of conveyance to a purchaser, where the Commis-
sioner shall certify that the duty has been properly
performed, 1 1 0

Fees to Counsel.

In the preparation of documents, fees to counsel allow-
ed on perusing and settling draft *Petition, Interro-
gatories, Cross Interrogatories, and Conveyance.*

On searches—*see* SEARCHES,

INSTRUCTIONS,

To proceed, 0 6 8

For affidavit, 0 6 8

For affidavit to verify undisputed claim, 0 6 8

INSTRUCTIONS—continued.**£ s. d.**

On appointment of new Solicitor for reading documents,
proceedings, and rules in ordinary cases, .

. 1 0 0

[And in extraordinary cases, according to the labour and difficulty.]

LETTERS,

Writing letter, signing, and entry, .

. 0 3 4

If several of same import, in nature of a circular, for
the first,

. 0 3 4

For each subsequent one or copy,

. 0 1 0

Reading letter containing instructions,

. 0 2 6

After the final schedule of incumbrances is confirmed,
for writing letter to the parties whose names shall
appear as incumbrancers thereon, and to whom the
fund in Court shall reach, apprising them thereof,
for the first letter,

. 0 3 4

For each succeeding letter, including postage,

. 0 1 0

NOTICE,

Notice under Thirteenth General Order,

For each tenant whose tenancy shall be found to be
correctly set forth in the notice under this order,
(except as hereinafter mentioned) including notice, 0 4 0

[This fee to include all readings, correspondence, and atten-
dances to acquire information necessary for the preparation of
such notices, and attendance on Secretary therewith.]

In case the carriage of the proceedings shall be trans-
ferred from the petitioner to another party, and that
the tenancy, as described in schedule to the petition,
shall be found accurate, and be adopted in the
rental, a fee of only 2s. shall be allowed for each,
to the party so obtaining the carriage of sale.

A separate notice to be allowed for each townland.]

Copy said Notice,

If the number of tenants on each townland shall not
exceed twenty, for each copy served, per folio, or
fraction thereof,

. 0 0 3

NOTICE—*continued*.

£ s. d.

If the number of tenants thereon shall exceed twenty, the costs of printing such notice only to be allowed, viz., two attendances on printer, one as instructions, another to correct proof sheet, and the reasonable sum paid for printing.

Of examination of each witness, 0 6 8

Draft of any other notice, same as in chancery.

PERUSING DEEDS,

Perusing and abstracting deeds, preparatory to drawing statement of title, for each skin of fifteen office sheets

of ninety words each, 0 3 0

The concluding fraction of a skin, 0 3 0

POSTING—*see* DRAFTS, ADVERTISEMENT.

SCHEDULES,

To petition, or of incumbrances—*see* DRAFTS.

SEARCHES,*

Fee on search in the Registry Office, for each head denomination of land for each ten years, or fraction

of ten years, 0 6 8

Fee on search for each person searched against, for

each ten years or fraction of ten years, 0 6 8

Fee on every negative search by officer, 0 13 4

SIGNING,

Draft requisition for search, per folio of ninety words, 0 1 0

[The like fees for searches in any public office, when directed by the Court.]

Signing any document requiring signature, 0 3 4

NOTE—For any business not specified above, the same fee as allowed for similar business in the Court of Chancery. The above fees are to be exclusive of all disbursements except for clerks, stationery, and scrivener's work.

In the preparation of documents, fees to counsel allowed on perusing and settling draft petition, interrogatories, cross-interrogatories, and conveyance.

* By a recent rule no greater sum than \$1 6s. 8d. per day, allowed. See p. 50.

ADDENDA ET CORRIGENDA.

THE following By-rules of the Commissioners were published on the 29th November, 1853, and will make some slight alteration in the practice in reference to lodging money, the posting for the sale, and procuring the certificate of advertisements.

Lodgment of money.

1. That in future all certificates for lodgment of money in the Bank by Purchasers, shall be given and signed by the Auction Clerk only, who shall take special care that the heading and title of the account shall be correctly stated.

2. When any lodgment is made in the Bank to the credit of the Commissioners, the person lodging the same shall be entitled to obtain from the Bank a docket of such lodgment; but the Bank receipt for such lodgment shall be handed over direct from the Bank to the Accountant,

Postings for sale.

3. That in future all postings for sales shall, on the same being approved of by a Commissioner or his Examiner, be signed by the Auction Clerk, and not by the Secretary or Registrar.

Checking postings.

4. That in future it shall be the duty of the Auction Clerk, instead of the Secretary, to check and certify all advertisements of postings for sale, and to give certificates thereof.

Office accounts.

5. That no requisition nor estimate shall be sent in to any of the public departments, and no incidental expenses incurred, unless sanctioned by the Commissioners or one of them.

6. That the several incidental accounts of the office, with all proper and necessary vouchers, shall be submitted to the Commissioners or one of them, before the same shall be transmitted to the Treasury.

(Signed) JOHN RICHARDS.
MOUNTIFORD LONGFIELD, LL.D.
C. J. HARGREAVE.

By some mistake the following By-rule of 10th January, 1850, was omitted in the foregoing pages:—

It is ordered, that in all cases where any motion may be properly made in Chamber, the cost of the appearance by counsel shall only be allowed when the necessity for such appearance shall be certified by the Commissioner; and in such cases the costs of appearance by one counsel only will be allowed.

The following rather important case was also accidentally omitted from the Chapter on the Carriage of Proceedings:—

Where the solicitor for the petitioner having the carriage of the sale, conceiving it would be injudicious to proceed at once under the absolute order, consulted counsel and otherwise took upon himself to do things, even beneficial to the estate—such as purchasing up annuities, &c.—Mr. Commissioner Longfield took the carriage of the proceedings from him, remarking “that there hardly could be a more objectionable proceeding than for a party, having the carriage of the proceedings, to enter into negotiations with parties in reference to charges on the estate. The Commissioners would also discountenance the consulting of counsel, and the acting on counsel’s advice, by parties having the carriage of the proceedings. If such persons thought they had good grounds for delaying the proceedings, they should apply to the Commissioners for permission to delay.”—*In re L. W. Nolan.*

Solicitor having carriage of sale should not delay without Commissioner’s authority.

Or enter into negotiation with parties, or consult counsel in reference to estates, without Commissioners’ authority.

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